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Executive Orders

EXECUTIVE ORDER BJ 11-25

Executive Branch—Expenditure Reduction

WHEREAS, pursuant to R.S. 39:75(A)(1), the Division of Administration is directed to submit a monthly budget status report to the Joint Legislative Committee on the Budget (hereafter "the Committee") indicating the balance of the budget for the State General Fund and dedicated funds by comparing the official forecast for these funds to the total authorized appropriations from each fund; once approved by the Committee, the most recent budget status report becomes the official budget status of the State;

WHEREAS, if the most recently approved budget status report indicates that the total appropriation from any fund will exceed the official forecast for that fund, R.S. 39:75(B) requires the Committee to immediately notify the Governor that a projected deficit exists for that fund;

WHEREAS, the Committee notified the Governor that it approved a budget status report at its December 16, 2011 meeting, indicating a projected deficit of Two Hundred Fifty-One Million Two Hundred Seventy-Nine Thousand Four Hundred Seventy-Seven Dollars (\$251,279,477) exists in the State General Fund for Fiscal Year 2011-2012, based on the revised official forecast of revenue available for appropriation adopted by the Revenue Estimating Conference on December 14, 2011, compared to total appropriations;

WHEREAS, once notified that a projected deficit exists, pursuant to Article VII, Section 10, of the Constitution of Louisiana and R.S. 39:75(C)(1)(a), the Governor has interim budget balancing powers to adjust the budget, including the authority to reduce appropriations for the executive branch of government for any program that is appropriated from a fund that is in a deficit posture, not exceeding three percent (3%) in the aggregate of the total appropriations for each budget unit for the fiscal year, and if the Governor does not make necessary adjustments in the appropriations to eliminate the projected deficit within thirty (30) days of the determination of the projected deficit in a fund, R.S. 39:75(D) mandates that the Governor call a special session of the Louisiana Legislature for that purpose;

WHEREAS, as authorized by R.S. 39:75(C)(1)(a), I am exercising my unilateral interim budget balancing powers to reduce the projected deficit by \$140,870,649;

WHEREAS, after utilizing that authority, \$110,408,828 remains of the projected deficit which must be eliminated, therefore I direct the Commissioner of Administration (hereafter "Commissioner") to present to the Committee for its approval a plan to eliminate the remaining amount of the projected deficit pursuant to R.S. 39:75(C)(2);

WHEREAS, this Executive Order and the plan to be submitted to the Committee may utilize all or a portion of the General Fund dollar savings objective specified in Executive Order BJ 2011-12.

NOW THEREFORE, I, Bobby Jindal, Governor of the State of Louisiana, by virtue of the authority vested by the

Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The following departments, agencies, and/or budget units (hereafter "Unit" and/or "Units") of the executive branch of the State of Louisiana, as described in and/or funded by appropriations through Acts 12, 22, and 42 of the 2011 Regular Session of the Louisiana Legislature (hereafter "the Acts"), shall reduce expenditure of funds appropriated to the Unit from the State General Fund by the Acts, in the amounts shown below:

Act 12-General Operating Appropriations Act:

Schedule 01-Executive Department State General Fund

01-100 Executive Office \$ 225,000
01-102 Inspector General \$ 17,837
01-103 Mental Health Advocacy Service \$ 91,333
01-107 Division of Administration \$ 1,015,000
01-111 Governor's Office of Homeland Security \$ 203,500
01-112 Military Affairs \$ 300,000
01-129 Louisiana Commission on Law Enforcement \$ 211,715
01-133 Elderly Affairs \$ 100,000

Schedule 03-Veterans Affairs

03-130 Veteran's Affairs \$ 227,318

Schedule 04-Elected Officials

04-139 Secretary of State \$ 1,490,918
04-141 Office of Attorney General \$ 119,000
04-146 Lieutenant Governor \$ 46,371
04-160 Agriculture and Forestry \$ 1,183,683

Schedule 05-Economic Development

05-251 Office of the Secretary \$ 484,270

Schedule 06-Culture, Recreation and Tourism

06-261 Office of the Secretary \$ 107,614
06-262 Office of the State Library \$ 153,994
06-263 Office of State Museum \$ 190,316
06-264 Office of State Parks \$ 604,792
06-265 Office of Cultural Development \$ 81,473

Schedule 08-Corrections Services

08A-400 Corrections Administration \$ 219,230
08A-401 C. Paul Phelps Correctional Center \$ 186,607
08A-402 Louisiana State Penitentiary \$ 286,026
08A-405 Avoyelles Correctional Center \$ 270,946
08A-406 Louisiana Correctional Institute for Women \$ 148,110
08A-409 Dixon Correctional Institute \$ 365,231
08A-412 J. Levy Dabadie Correctional Center \$ 119,292
08A-413 Elayn Hunt Correctional Center \$ 295,186
08A-414 David Wade Correctional Center \$ 846,861
08A-415 Adult Probation and Parole \$ 1,949,935

Schedule 08-Public Safety Services

08B-419 Office of State Police \$ 2,351,002

Schedule 08-Youth Services

08C-403 Office of Juvenile Justice \$ 4,297,226

Schedule 09-Health and Hospitals

09-300 Jefferson Parish Human Services Authority \$ 277,042
09-301 Florida Parishes Human Services Authority \$ 109,501
09-302 Capital Area Human Services District \$ 166,098
09-304 Metropolitan Human Services District \$ 463,915
09-305 Medical Vendor Administration \$ 3,627,620
09-306 Medical Vendor Payments \$ 53,812,752
09-307 Office of the Secretary \$ 1,061,505
09-309 South Central Human Services Authority \$ 322,485
09-320 Office of Aging and Adult Services \$ 480,805
09-324 Louisiana Emergency Response Network \$ 87,277

09-326 Office of Public Health \$ 312,479
09-330 Office of Behavioral Health \$ 1,634,641
09-340 Office of Citizens with Developmental Disabilities
\$ 216,580

Schedule 10-Department of Children and Family Services

10-360 Office of Children and Family Services \$ 8,000,000

Schedule 11-Natural Resources

11-431 Office of the Secretary \$ 135,247

11-432 Office of Conservation \$ 22,864

Schedule 17-State Civil Service

17-562 Ethics Administration \$ 120,842

17-563 State Police Commission \$ 18,431

17-564 Division of Administrative Law \$ 16,939

Schedule 19-Higher Education

19A-HIED \$ 50,000,000

Schedule 19-Special Schools and Commissions

19B-653 Louisiana School for the Deaf and Visually Impaired \$
202,699

19B-657 Louisiana School for Math, Science, and the Arts \$
23,726

19B-666 Board of Elementary and Secondary Education \$ 10,000

19B-673 New Orleans Center for the Creative Arts \$ 37,000

Schedule 19-Education

19D-678 State Activities \$ 419,168

19D-681 Subgrantee Assistance \$ 645,000

19D-697 Non-Public Educational Assistance \$ 116,000

19D-699 Special School Districts \$ 129,429

Schedule 20-Other Requirements

20-452 Local Housing of State Juvenile Offenders \$ 195,387

20-933 Governor's Conferences and Interstate Compacts \$ 15,431

SECTION 2:

A. No later than December 29, 2011, the head of each Unit listed in Section 1 of this Order shall submit to the Commissioner a midyear budget reduction plan, on the BA-7 form and questionnaire, which reflects the Unit's proposed allocation of the expenditure reduction ordered in Section 1 of this Order (hereafter "mid-year budget reduction plan"), and a description of the methodology used to formulate the mid-year budget reduction plan.

B. In the event that positions of employment will be affected by the mid-year budget reduction, these positions should be included in your mid-year budget reduction plan.

C. No Unit shall implement the expenditure reduction mandated by Section 1 of this Order without the Commissioner's prior written approval of the Unit's mid-year budget reduction plan.

D. After the Commissioner has given approval of a Unit's mid-year budget reduction plan, any change to the mid-year budget reduction plan requires prior written approval from the commissioner.

SECTION 3: The Commissioner is authorized to develop additional guidelines as necessary to facilitate the administration of this Order.

SECTION 4: All departments, commissions, boards, offices, entities, agencies, and officers of the State of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate in the implementation of the provisions of this Order.

SECTION 5: This Order is effective upon signature and shall remain in effect through June 30, 2012, unless amended, modified, terminated, or rescinded prior to that date.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of

Louisiana, at the Capitol, in the city of Baton Rouge, on this 16th day of December, 2011.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1112#082

EXECUTIVE ORDER BJ 11-26

Qualified Energy Conservation Bond Allocation
Louisiana Department of Public Safety and
Corrections—Corrections Services

WHEREAS, Federal law established volume cap authorization for Qualified Energy Conservation Bonds ("QECB") that may be issued by each state, of which the State of Louisiana (the "State") was granted a maximum allocation in the amount of \$45,759,000.00; and

WHEREAS, the State was granted a direct QECB allocation of \$17,282,462.00, and an indirect QECB allocation of \$28,476,538.00 to sub-allocate to qualified large local governmental entities. The State allocated \$28,476,538.00 to qualified large local governmental entities, of which \$20,986,830 was returned to the State for allocation, resulting in a total State QECB allocation of \$38,269,292; and

WHEREAS, none of the QECB volume cap allocation granted to the State has been previously utilized by any political subdivision or governmental agency within the State; and

WHEREAS, the Louisiana Department of Public Safety and Corrections-Corrections Services ("LADOC") has requested and applied for an allocation of the available QECB authority granted to the State, in the amount not to exceed Thirty One Million Dollars (\$31,000,000), to undertake a QECB qualifying project to install capital improvements and upgrades at various facilities throughout the State; and

WHEREAS, the State was granted a direct QECB allocation of \$17,282,462.00, and an indirect QECB allocation of \$28,476,538.00 to sub-allocate to qualified large local governmental entities. The State allocated \$28,476,538.00 to qualified large local governmental entities, of which \$20,986,830 was returned to the State for allocation, resulting in a total State QECB allocation of \$38,269,292; and

WHEREAS, LADOC shall undertake the project through financing secured and facilitated by the Louisiana Local Government Environmental Facilities and Community Development Authority.

NOW THEREFORE, I, BOBBY JINDAL, Governor of the State of Louisiana, by virtue of the authority vested in me by the Constitution and Laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The issuer, as described in this Section, shall be and is hereby granted an allocation of the available Qualified Energy Conservation Bond volume cap authorization issued to the State of Louisiana, to be utilized

on behalf of and for the benefit of LADOC, in the amount shown below:

Amount of Allocation	Name of Issuer	Name of Project
\$30,600,000.00	Louisiana Local Government Environmental Facilities and Community Development Authority	Louisiana Department of Public Safety and Corrections—Corrections Services Energy Project

SECTION 2: The allocation granted herein shall be used only for the bond issue described in Section 1 and for the general purpose set forth in the application and "Qualified Energy Conservation Bond Allocation Request" submitted by LADOC in connection with the bond issue described in Section 1.

SECTION 3: The allocation granted herein shall be valid in full force and effect through January 31, 2012, provided that said bonds are delivered to the initial purchasers thereof on or before December 31, 2011.

SECTION 4: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 20th day of December, 2011.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1112#083

EXECUTIVE ORDER BJ 11-27

Executive Branch—DOTD Guidelines for Vehicles, Trucks and Loads which Haul Hay from Louisiana to Texas

WHEREAS, R.S. 32:387 sets forth the terms and conditions whereby vehicles hauling certain loads may be issued special permits by the Department of Transportation and Development if they are in excess of legal statutory size and weight limits;

WHEREAS, as a result of the effects of a severe and extended drought condition in areas of Texas, a dire necessity has arisen for oversize loads of hay to be expeditiously moved from Louisiana to Texas;

WHEREAS, the economic vitality of the farming industry is extremely dependent on the availability of hay for feed for the livestock; and

WHEREAS, in order to provide emergency assistance to Texas farmers, the State of Louisiana is willing to waive certain permits, fees, and other obligations normally incurred by transporters;

NOW THEREFORE, I, BOBBY JINDAL, Governor of the State of Louisiana, by virtue of the authority vested by

the Constitution and the laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The Department of Transportation and Development, the Department of Public Safety, and the Department of Revenue shall waive the following statutory requirements for the shipment of hay:

A. The following sizes and weights for vehicles transporting hay on highways maintained by the State of Louisiana shall not exceed the following limitations without permits:

1. All such vehicles transporting round hay bales to be loaded side by side across trailers creating dimensions that shall not exceed twelve (12) feet in width and shall not exceed fourteen (14) feet in height.

B. Permit fees are waived for all carriers while engaged in the transportation of hay to the victims of the drought in Texas.

C. The following requirements shall remain in effect:

1. All such vehicles must travel during daylight hours only, beginning at sunrise and ending at sunset.

2. All such vehicles must travel with the required signs and flags properly placed and indicating that they bear oversized loads.

3. Vehicles must be equipped with mirrors so that drivers are able to have a clear view of the highway at least 200 feet to the rear of the vehicle.

4. Loads must be securely bound to the transporting vehicles.

E. Carriers, owners and/or drivers of any vehicle being operated under this Order are responsible for verifying in advance that the actual dimensions and weights of the vehicles and loads are acceptable for all routes being traveled.

SECTION 2. Nothing in this Order shall be construed to allow any vehicle to exceed weight limits posted for bridges and similar structures, or relieve any vehicle or carrier, owner or driver of any vehicle from compliance with any restrictions other than those specified, or from any statute, rule, order or other legal requirement not specifically waived herein.

SECTION 3. This Order is effective upon signature and shall terminate on March 30, 2012 unless amended, modified, terminated or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 31st day of December, 2011.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1112#084

Emergency Rules

DECLARATION OF EMERGENCY

Department of Children and Family Services Division of Programs Economic Stability and Self-Sufficiency

Increasing Resource Limit for Households with Elderly and Disabled Members (LAC 67:III.1983)

The Department of Children and Family Services (DCFS) has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt LAC 67: III, Subpart 3, Chapter 19, Section 1983. This declaration is necessary to extend the original Emergency Rule effective October 1, 2011, since it is effective for a maximum of 120 days and will expire on January 28, 2012, before the final Rule takes effect. This Emergency Rule extension will become effective on January 28, 2012 and will remain in effect until the final Rule becomes effective.

Pursuant to Section 5(g) of the Food, Conservation and Energy Act of 2008 (FECA), adjustments to the Supplemental Nutrition Assistance Program (SNAP) asset limit shall reflect changes for the twelve month period ending the preceding June in the Consumer Price Index (CPI) for all Urban Consumers and will be rounded down to the nearest \$250 increment. In accordance with the Food and Nutrition Services (FNS) SNAP policy memo dated August 29, 2011, Section 1983 of Subpart 3, Chapter 19, Subchapter I is being revised effective October 1, 2011 to increase the resource limit to \$3,250 for households that include at least one elderly or disabled member who is not categorically eligible.

Emergency action is required in this matter in order to avoid sanctions and penalties from the United States (R.S. 49:953(B)). If the agency does not follow the Federal law regarding increasing the resource limit for households that include at least one elderly or disabled member who is not categorically eligible, the department may be subject to sanctions and penalties.

Title 67

SOCIAL SERVICES

Part III. Economic Stability and Self-Sufficiency

Subpart 3. Supplemental Nutrition Assistance Program (SNAP)

Chapter 19. Certification and Eligible Households

Subchapter I. Income and Deductions

§1983. Income Deductions and Resource Limits

A. - A.3.a. ...

B. For federal fiscal year 2011 and each subsequent federal fiscal year, the resource limit will be calculated based on changes in the Consumer Price Index for All Urban Consumers for the 12-month period ending the preceding June and will be rounded down to the nearest \$250 increment. The resource limit for a household is \$2,000, and effective October 1, 2011, the resource limit for a household that includes at least one elderly or disabled member is

\$3,250 for households and individuals who are not categorically eligible.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.9 (d)(2) and (d)(6), P.L. 104-193, P.L. 106-387 and P.L. 107-171; Act 58, 2003 Reg. Session, P.L. 110-246, and Section 5(g) of the Food, Conservation and Energy Act of 2008 (FECA).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 12:285 (May 1986), amended LR 12:423 (July 1986), LR 12:824 (December 1986), LR 13:181 (March 1987), LR 14:684 (October 1988), LR 15:14 (January 1989). Amended by the Department of Social Services, Office of Family Support, LR 19:303 (March 1993), LR 19:905 (July 1993), LR 20:780 (July 1994), LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21:186 (February 1995), LR 23:82 (January 1997), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 29:607 (April 2003), LR 30:495 (March 2004), LR 35: (April 2009), amended by the Department of Children and Family Services, LR 36:2530 (November 2010), LR 38:

Ruth Johnson
Secretary

1201#072

DECLARATION OF EMERGENCY

Department of Children and Family Services Division of Programs Licensing Section

Emergency Preparedness and Evacuation Planning
(LAC 67:III.7312, 7327, 7328, 7365, 7373, and 7378)

The Department of Children and Family Services (DCFS), Division of Programs, Licensing Section has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend LAC 67: III, Subpart 21, Chapter 73 Day Care Centers, Subchapter A, Licensing Class "A" Regulations for Child Care Centers and Subchapter B, Licensing Class "B" Regulations for Child Care Centers. This declaration is necessary to extend the original emergency rule adopted on October 6, 2011, and effective December 1, 2011, since it is effective for a maximum of 120 days and will expire on February 2, 2012, before the final Rule takes effect. This Emergency Rule extension will become effective on February 2, 2012 and will remain in effect until the final Rule becomes effective.

In order to protect children in child care facilities licensed by DCFS, Section 7328 is being added to Chapter 73, Subchapter A, and Section 7378 to Subchapter B as emergency preparedness and evacuation planning regulations. These regulations will provide specific standards for written multi-hazard plans for child care providers which include shelter in place, lock down situations, and evacuations with regard to natural disasters, man-made disasters, and attacks while children are in care. Sections 7312, 7327, 7365, and 7373, are being amended to remove references to emergency procedures as they will be addressed in the above added sections.

Emergency action is necessary to prevent a threat to the health, safety, and welfare of children in licensed care in the event of any emergency. A lack of specific standards concerning written emergency procedures could allow facilities to go without establishing and following a written emergency and evacuation plan. This could pose a substantial risk should a disaster or attack occur while children are in licensed out of home care.

Title 67

SOCIAL SERVICES

Part III. Economic Stability and Self-Sufficiency

Subpart 21. Child Care Licensing

Chapter 73. Day Care Centers

Subchapter A. Licensing Class "A" Regulations for Child Care Centers

§7312. Staff Development and Training

A. - E.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1114 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2763 (December 2007), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§7327. Safety Requirements

A. - N. ...

O. The entire center shall be checked after the last child departs to ensure that no child is left unattended at the center. Documentation shall include date, time, and signature of staff conducting the visual check.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1119 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2767 (December 2007), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§7328. Emergency Preparedness and Evacuation

Planning

A. The director, in consultation with appropriate state or local authorities, shall establish and follow a written multi-hazard emergency and evacuation plan to protect children in the event of an emergency. The plan shall include shelter in place, lock down situations, and evacuations with regard to natural disasters, man-made disasters, and attacks while children are in care. The plan shall be appropriate for the area in which the center is located and address any potential disaster due to that particular location. The plan shall be reviewed with all staff at least twice per calendar year. Documentation evidencing that the plan has been reviewed with all staff shall include staff signatures and date reviewed. At a minimum, the plan shall be reviewed annually by the director for accuracy and updated as changes occur. Documentation of review by the director shall consist of the director's signature and date. The plan shall also include information regarding handling children with special needs

enrolled in the child care center as well as instructions for infants through children age two. The plan shall specifically address the evacuation and transportation of children in wheelchairs. The plan shall include but shall not be limited to a system to account for all children whether sheltering in place, locking down, or evacuating to a pre-determined relocation site. The plan shall include a system and back up system to contact parents or authorized third party release caretakers of children notifying them of the emergency situation (how and when parents will be notified). The plan shall include a system to reunify children and parents following an emergency. Parents shall be informed of the details of this emergency plan prior to an emergency event.

B. The multi-hazard emergency and evacuation plan shall include lock down procedures for situations that may result in harm to persons inside the child care center, including but not limited to a shooting, hostage incident, intruder, trespassing, disturbance, or any situation deemed harmful at the discretion of the director, or public safety personnel. The director shall announce the "lock down" over the public address system or other designated system. The alert may be made using a pre-selected code word. In a "lock down" situation, all children shall be kept in classrooms or other designated safe locations that are away from the danger. Staff members shall account for children and ensure that no one leaves the classroom/safe area. Staff shall secure center entrances and ensure that no unauthorized individual leaves or enters the center.

1. Staff and children shall remain in the classroom/safe area, locking the classroom door, turning off the lights, and covering the windows. Staff shall encourage children to get under tables, behind cabinets, etc., and, if possible, engage in quiet story time activities with the children until "all clear" is announced.

2. Parent or authorized representative shall be notified no later than at the time of pick-up at the child's release of a "lock down" situation at the center on the date of the occurrence.

C. An individualized emergency plan (including medical contact information and additional supplies/equipment needed) shall be in place for each child with special needs.

D. If evacuation of the center is necessary, provider shall have an evacuation pack and all staff shall know the location of the pack. The contents shall be replenished as needed. At a minimum, the pack shall contain the following:

1. list of area emergency phone numbers;
2. list of emergency contact information and emergency medical authorization for all children enrolled;
3. written authorization signed and dated by the parent noting the first and last names of individuals to whom the child may be released other than the parent(s);
4. first aid kit;
5. hand sanitizer;
6. wet wipes;
7. tissue;
8. diapers if children enrolled who are not yet potty trained;
9. plastic bags;
10. battery powered flashlight;
11. battery powered radio;
12. batteries;

13. food for all ages of children enrolled, including infant food and formula;
14. disposable cups; and
15. bottled water.

E. Provider shall maintain a copy of all records, documents, and computer files necessary for the continued operation of the center following an emergency in a portable file and/or offsite location.

F. If the center is located within a ten-mile radius of a nuclear power plant or research center, the center shall also have plans for nuclear evacuation.

G.1 Fire drills shall be conducted at least once per month. Drills shall be conducted at various times of the day to include all children (children attending on certain days only and/or at certain times only) and shall be documented. Documentation shall include:

- a. date and time of drill;
- b. number of children present;
- c. amount of time to evacuate the center;
- d. problems noted during drill and corrections noted; and
- e. signatures (not initials) of staff present.

2. The Licensing Section recommends that at least one fire drill every six months be held at rest time.

H.1 Tornado drills shall be conducted at least once per month in the months of March, April, May, and June. Drills shall be conducted at various times of the day to include all children (children attending on certain days only and/or at certain times only) and shall be documented. Documentation shall include:

- a. date and time of drill;
- b. number of children present;
- c. problems noted during drill and corrections noted; and
- d. signatures (not initials) of staff present.

NOTE: For additional information contact the Office of Emergency Preparedness (Civil Defense) in your area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

Subchapter B. Licensing Class “B” Regulations for Child Care Centers

§7365. Center Staff

A. - D.6....

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1639 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2774 (December 2007), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§7373. Physical Plant and Equipment

A. - B.9. ...

C. Safety Regulations

1. Drugs, poisons, harmful chemicals, all products labeled “Keep out of the reach of children,” equipment and tools shall be locked away from the children. Whether a cabinet or an entire room, the storage area must be locked.

2. Refrigerated medications shall be in a secure container to prevent access by children and avoid contamination of food.

3. Secure railings shall be provided for:

- a. flights of more than three steps;
- b. porches more than 3 feet from the ground.

4. Gates shall be provided at the head or foot of each flight of stairs to which children have access.

5. Accordion gates are prohibited.

6. First Aid Supplies shall be available at the day care center. (Suggestions for first aid supplies may be obtained from the Red Cross.)

7. The center and yard must be clean and free from hazards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1641 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2776 (December 2007), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§7378. Emergency Preparedness and Evacuation Planning

A. The director, in consultation with appropriate state or local authorities, shall establish and follow a written multi-hazard emergency and evacuation plan to protect children in the event of an emergency. The plan shall include shelter in place, lock down situations, and evacuations with regard to natural disasters, man-made disasters, and attacks while children are in care. The plan shall be appropriate for the area in which the center is located and address any potential disaster due to that particular location. The plan shall be reviewed with all staff at least twice per calendar year. Documentation evidencing that the plan has been reviewed with all staff shall include staff signatures and date reviewed. At a minimum, the plan shall be reviewed annually by the director for accuracy and updated as changes occur. Documentation of review by the director shall consist of the director’s signature and date. The plan shall also include information regarding handling children with special needs enrolled in the child care center as well as instructions for infants through children age two. The plan shall specifically address the evacuation and transportation of children in wheelchairs. The plan shall include but shall not be limited to a system to account for all children whether sheltering in place, locking down, or evacuating to a pre-determined relocation site. The plan shall include a system and back up system to contact parents or authorized third party release caretakers of children notifying them of the emergency situation (how and when parents will be notified). The plan shall include a system to reunify children and parents following an emergency. Parents shall be informed of the details of this emergency plan prior to an emergency event.

B. The multi-hazard emergency and evacuation plan shall include lock down procedures for situations that may result in harm to persons inside the child care center, including but not limited to a shooting, hostage incident, intruder, trespassing, disturbance, or any situation deemed harmful at the discretion of the director, or public safety

personnel. The director shall announce the “lock down” over the public address system or other designated system. The alert may be made using a pre-selected code word. In a “lock down” situation, all children shall be kept in classrooms or other designated safe locations that are away from the danger. Staff members shall account for children and ensure that no one leaves the classroom/safe area. Staff shall secure center entrances and ensure that no unauthorized individual leaves or enters the center.

1. Staff and children shall remain in the classroom/safe area, locking the classroom door, turning off the lights, and covering the windows. Staff shall encourage children to get under tables, behind cabinets, etc., and, if possible, engage in quiet story time activities with the children until “all clear” is announced.

2. Parent or authorized representative shall be notified no later than at the time of pick-up at the child’s release of a “lock down” situation at the center on the date of the occurrence.

C. An individualized emergency plan (including medical contact information and additional supplies/equipment needed) shall be in place for each child with special needs.

D. If evacuation of the center is necessary, provider shall have an evacuation pack and all staff shall know the location of the pack. The contents shall be replenished as needed. At a minimum, the pack shall contain the following:

1. list of area emergency phone numbers;
2. list of emergency contact information and emergency medical authorization for all children enrolled;
3. written authorization signed and dated by the parent noting the first and last names of individuals to whom the child may be released other than the parent(s);
4. first aid kit;
5. hand sanitizer;
6. wet wipes;
7. tissue;
8. diapers if children enrolled who are not yet potty trained;
9. plastic bags;
10. battery powered flashlight;
11. battery powered radio;
12. batteries;
13. food for all ages of children enrolled, including infant food and formula;
14. disposable cups; and
15. bottled water.

E. Provider shall maintain a copy of all records, documents, and computer files necessary for the continued operation of the center following an emergency in a portable file and/or offsite location.

F. If the center is located within a ten-mile radius of a nuclear power plant or research center, the center shall also have plans for nuclear evacuation.

G.1 Fire drills shall be conducted at least once per month. Drills shall be conducted at various times of the day to include all children (children attending on certain days only and/or at certain times only) and shall be documented. Documentation shall include:

- a. date and time of drill;
- b. number of children present;
- c. amount of time to evacuate the center;

d. problems noted during drill and corrections noted; and

e. signatures (not initials) of staff present.

2. The Licensing Section recommends that at least one fire drill every six months be held at rest time.

H.1 Tornado drills shall be conducted at least once per month in the months of March, April, May, and June. Drills shall be conducted at various times of the day to include all children (children attending on certain days only and/or at certain times only) and shall be documented. Documentation shall include:

- a. date and time of drill;
- b. number of children present;
- c. problems noted during drill and corrections noted; and

d. signatures (not initials) of staff present.

NOTE: For additional information contact the Office of Emergency Preparedness (Civil Defense) in your area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

Ruth Johnson
Secretary

1201#073

DECLARATION OF EMERGENCY
Department of Environmental Quality
Office of the Secretary

Offset Requirements
(LAC 33:III.504, 603, and 607)(AQ327E)

In accordance with R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Environmental Quality to use emergency procedures to establish rules, and R.S. 30:2011 and 2054, which authorize the department to promulgate rules and regulations, the secretary of the department hereby declares that an emergency action is necessary to implement transitional permitting procedures between the effective date of the redesignation of the Baton Rouge area to attainment of the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) and the effective date of the area’s (or portion thereof) nonattainment designation with respect to the 2008 8-hour ozone NAAQS.

The Baton Rouge area (i.e., Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes) is currently designated as nonattainment with respect to the 1997 8-hour ozone NAAQS of 0.08 parts per million (ppm). Consequently, increases of nitrogen oxides (NO_x) and volatile organic compound (VOC) emissions are governed by Nonattainment New Source Review (NNSR) procedures provided by LAC 33:III.504. Under NNSR, prior to the construction of a new major stationary source or a major modification of an existing major stationary source, an owner or operator must obtain “offsets” for significant increases in emissions of NO_x and VOC in the form of Emission Reduction Credits (ERC) banked in accordance with LAC 33:III.Chapter 6.

On November 30, 2011, EPA redesignated the Baton Rouge area to attainment of the 1997 ozone NAAQS, effective December 30, 2011. Therefore, on December 30, 2011, NNSR provisions, including those requiring offsets for significant NO_x and VOC increases, will no longer be mandated by the Clean Air Act (CAA). However, as discussed below, another ozone standard will soon be implemented, and one or more parishes within the Baton Rouge area will once again be designated as nonattainment. Further, the maintenance plan for the area, required by the CAA to ensure Baton Rouge remains in compliance with the 1997 ozone NAAQS, assumed no net growth in point source NO_x and VOC emissions.

On March 27, 2008, EPA lowered the ozone NAAQS from 0.08 ppm to 0.075 ppm. This standard became effective on May 27, 2008. However, on September 16, 2009, the EPA announced it would reconsider the ozone NAAQS and therefore delayed implementation of the 2008 standard. On January 19, 2010, EPA proposed that the primary standard should be set within the range of 0.060 to 0.070 ppm. However, on September 2, 2011, President Obama "requested that Administrator Jackson withdraw the draft Ozone National Ambient Air Quality Standards." Because the ongoing review of the 2008 ozone standard will not be completed for several years, EPA is now moving ahead with certain required actions to implement the 2008 standard.

Based on air quality data from 2008-2010, the department recommended that East Baton Rouge Parish be designated as nonattainment. EPA expects to finalize area designations in spring of 2012. For the short period of time during which East Baton Rouge will be an attainment area, and until the department completes final rulemaking to address NNSR in the Baton Rouge area subsequent to its designation under the 2008 ozone NAAQS, this Emergency Rule will require owners or operators to offset certain increases of NO_x and VOC emissions in order to ensure that Baton Rouge continues to make progress toward attainment of the 2008 ozone NAAQS. Further, in order to mitigate increases of NO_x and VOC emissions in Ascension, Iberville, Livingston, and West Baton Rouge Parishes consistent with the Baton Rouge area's maintenance plan, this Emergency Rule will also apply to owners or operators in those parishes as well.

This Emergency Rule is effective on December 30, 2011, and shall remain in effect for a maximum of 120 days. For more information concerning AQ327E, you may contact the Air Permits Division at (225) 219-3147.

Adopted this 21st day of December, 2011.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 5. Permit Procedures

§504. Nonattainment New Source Review (NNSR) Procedures and Offset Requirements in Specified Parishes

A. Applicability. Except as specified in Subsection M of this Section, the provisions of this Section apply to the construction of any new *major stationary source* or to any *major modification* at a major stationary source, as defined herein, provided such source or modification will be located within a nonattainment area so designated in accordance with Section 107 of the federal Clean Air Act, and will emit

a regulated pollutant for which it is major and for which the area is designated nonattainment. If any provision of this Section, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Section, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

A.1. - L.Table 1. ...

M. The provisions of this Subsection shall apply to stationary sources located in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge as long as each parish's designation with respect to the 8-hour national ambient air quality standard (NAAQS) for ozone is either attainment, marginal nonattainment, or moderate nonattainment.

1. New Stationary Sources. The owner or operator of a new stationary source shall provide offsets for potential VOC and NO_x emissions in excess of 50 tons per year.

2. Existing Stationary Sources

a. The owner or operator of an existing stationary source with a potential to emit of 50 tons per year or more of VOC shall provide offsets for each net emissions increase of 25 tons per year or more of VOC.

b. The owner or operator of an existing stationary source with a potential to emit of 50 tons per year or more of NO_x shall provide offsets for each net emissions increase of 25 tons per year or more of NO_x.

c. Consideration of the net emissions increase shall be triggered for any project that would increase emissions of VOC or NO_x by 25 tons per year or more, without regard to any project decreases.

3. Offsets shall be required at a ratio of 1.10 to 1 unless a higher ratio is mandated by Subsection L, Table 1 of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:176 (February 1993), repromulgated LR 19:486 (April 1993), amended LR 19:1420 (November 1993), LR 21:1332 (December 1995), LR 23:197 (February 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 27:2225 (December 2001), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 30:2801 (December 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 31:3123, 3155 (December 2005), LR 32:1599 (September 2006), LR 33:2082 (October 2007), LR 34:1890 (September 2008), LR 37:1568 (June 2011), LR 38:

Chapter 6. Regulations on Control of Emissions through the Use of Emission Reduction Credits Banking

§603. Applicability

A. ...

B. Notwithstanding Subsection A of this Section, sources located in Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes may participate in the emissions banking program for purposes of securing offsets where required by LAC 33:III.504.M.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:874 (August 1994), amended LR 24:2239 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 28:301 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2068 (October 2007), LR 38:

§607. Determination of Creditable Emission Reductions

A. - C.3. ...

4. Quantify baseline emissions as follows:

a. for stationary sources located in ozone nonattainment areas:

i. - ii. ...

b. for stationary sources located in ozone attainment areas, baseline emissions shall be the lower of actual emissions or adjusted allowable emissions determined in accordance with Paragraph C.3 of this Section.

C.5. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:877 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 28:302 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 32:1601 (September 2006), LR 33:2068 (October 2007), LR 38:

Peggy M. Hatch
Secretary

1201#005

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Bureau of Health Services Financing**

Disproportionate Share Hospital Payments
(LAC 50.V.2501, 2701, 2705, and 2707)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50.V.2501, 2705, 2701, 2705, and 2707 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing disproportionate share hospital (DSH) payments to revise the provisions governing non-rural community hospitals and federally mandated statutory hospitals to clarify that hospitals qualifying as a non-rural community hospital in state fiscal year 2007-08 may also qualify in the federally mandated statutory hospital category, and to revise the definition of a non-rural community hospital (*Louisiana Register*; Volume 34, Number 11). In compliance with Act 228 of the 2009 Regular Session of the Louisiana Legislature, the department promulgated an Emergency Rule which amended the provisions governing

disproportionate share hospital payments to reallocate any remaining funds from the fiscal year 2009 DSH appropriation to non-rural community hospitals and issue a supplemental payment to these hospitals for their uncompensated care costs (*Louisiana Register*; Volume 35, Number 7).

Act 10 of the 2009 Regular Session of the Louisiana Legislature directed the department to amend the DSH qualifying criteria and payment methodologies for non-rural community hospitals. In compliance with Act 10, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions of the June 26, 2009 Emergency Rule governing supplemental DSH payments to non-rural community hospitals (*Louisiana Register*, Volume 36, Number 1). The department promulgated an Emergency Rule which amended the January 20, 2010 Emergency Rule to amend the provisions governing supplemental DSH payments to non-rural community hospitals in order to redistribute the funds allocated for the state fiscal year 2010 DSH appropriation (*Louisiana Register*, Volume 36, Number 7).

The department promulgated an Emergency Rule which amended the June 29, 2010 Emergency Rule to revise the provisions governing DSH payments to allow for additional payments after completion of the Centers for Medicare and Medicaid Services' mandated independent audit for the state fiscal year (*Louisiana Register*, Volume 37, Number 6). This Emergency Rule is being promulgated to continue the provisions of the June 20, 2011 Emergency Rule. This action is being taken to promote the public health and welfare of uninsured individuals and to ensure their continued access to health care by assuring that hospitals are adequately reimbursed for furnishing uncompensated care.

Effective February 17, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing DSH payments.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Medical Assistance Program—Hospital Services

Subpart 3. Disproportionate Share Hospital Payments

Chapter 25. Disproportionate Share Hospital Payment Methodologies

§2501. General Provisions

A. - B.3. ...

4. Qualification is based on the hospital's latest filed cost report and related uncompensated cost data as required by the Department. Qualification for small rural hospitals is based on the latest filed cost report. Hospitals must file cost reports in accordance with Medicare deadlines, including extensions. Hospitals that fail to timely file Medicare cost reports and related uncompensated cost data will be assumed to be ineligible for disproportionate share payments. Only hospitals that return timely disproportionate share qualification documentation will be considered for disproportionate share payments. After the final payment during the state fiscal year has been issued, no adjustment will be given on DSH payments with the exception of public state-operated hospitals, even if subsequently submitted documentation demonstrates an increase in uncompensated care costs for the qualifying hospital. After completion of a Center for Medicare and Medicaid Services' (CMS)

mandated independent audit for the state fiscal year, additional payments may occur subject to the conditions specified in §2701.B.1, §2705.D.2, and §2707.B. For hospitals with distinct part psychiatric units, qualification is based on the entire hospital's utilization.

B.5. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:654 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:65 (January 2010), amended LR 36:512 (March 2010), LR 38:

Chapter 27. Qualifying Hospitals

§2701. Non-Rural Community Hospitals

A. ...

B. DSH payments to a public, non-rural community hospital shall be calculated as follows.

1. Each qualifying public, non-rural community hospital shall certify to the Department of Health and Hospitals its uncompensated care costs. The basis of the certification shall be 100 percent of the hospital's allowable costs for these services, as determined by the most recently filed Medicare/Medicaid cost report. The certification shall be submitted in a form satisfactory to the department no later than October 1 of each fiscal year. The department will claim the federal share for these certified public expenditures. The department's subsequent reimbursement to the hospital shall be in accordance with the qualifying criteria and payment methodology for non-rural community hospitals included in Act 11 of the 2010 Regular Session of the Louisiana Legislature, and may be more or less than the federal share so claimed. Qualifying public, non-rural community hospitals that fail to make such certifications by October 1 may not receive Title XIX claim payments or any disproportionate share payments until the department receives the required certifications. Adjustments to the certification amounts shall be made in accordance with the final uncompensated care costs as calculated per the CMS mandated audit for the state fiscal year.

C. Private, non-rural community hospitals (other than freestanding psychiatric hospitals) shall be reimbursed as follows.

1. If the hospital's qualifying uninsured cost is less than 4 percent of total hospital cost, no payment shall be made.

2. If the hospital's qualifying uninsured cost is equal to or greater than 4 percent of total hospital cost, but less than 7 percent, the payment shall be 50 percent of an amount equal to the difference between the total qualifying uninsured cost as a percent of total hospital cost and 4 percent of total hospital cost.

3. If the hospital's qualifying uninsured cost is equal to or greater than 7 percent of total hospital cost, but less than or equal to 10 percent, the payment shall be 80 percent of an amount equal to the difference between the total qualifying uninsured cost as a percent of total hospital cost and 4 percent of total hospital cost.

4. If the hospital's qualifying uninsured cost is greater than 10 percent of total hospital cost, the payment shall be

90 percent of qualifying uninsured cost for the portion in excess of 10 percent of total hospital cost and 80 percent of an amount equal to 5 percent of total hospital cost.

5. Qualifying uninsured cost as used for this distribution shall mean the hospital's total charges for care provided to uninsured patients multiplied by the hospital's cost-to-charge ratio as required by the CMS DHS audit rule for the applicable cost report period.

D. The department shall determine each qualifying hospital's uninsured percentage on a hospital-wide basis utilizing charges for dates of service from July 1, 2009 through June 30, 2010.

1. - 5. Repealed.

E. Hospitals shall submit supporting patient specific data in a format specified by the department, reports on their efforts to collect reimbursement for medical services from patients to reduce gross uninsured costs and their most current year-end financial statements. Those hospitals that fail to provide such statements shall receive no payments and any payment previously made shall be refunded to the department. Submitted hospital charge data must agree with the hospital's monthly revenue and usage reports which reconcile to the monthly and annual financial statements. The submitted data shall be subject to verification by the department before DSH payments are made.

F. In the event that the total payments calculated for all recipient hospitals are anticipated to exceed the total amount appropriated, the department shall reduce payments on a pro rata basis in order to achieve a total cost that is not in excess of the amounts appropriated for this purpose. Any funding not distributed per the methodology outlined in C.1-C.5 above shall be reallocated to these qualifying hospitals based on their reported uninsured costs. The \$10,000,000 appropriation for the non-rural community hospital pool shall be effective only for state fiscal year 2011 and distributions from the pool shall be considered nonrecurring.

G. Of the total appropriation for the non-rural community hospital pool, \$1,000,000 shall be allocated to public and private non-rural community hospitals with a distinct part psychiatric unit and \$1,000,000 shall be allocated to freestanding psychiatric hospitals.

1. To qualify for this payment hospitals must have uninsured cost as defined in §2701.C.5 equal to or greater than 4 percent of total hospital cost and:

a. be a public or private non-rural community hospital, as defined in §2701.A that has a Medicaid enrolled distinct part psychiatric unit; or

b. enrolled in Medicaid as a freestanding psychiatric hospital that pursuant to 42 CFR 441.151 is accredited by the Joint Commission on the Accreditation of Healthcare Organizations.

2. Payment shall be calculated by:

a. dividing each qualifying hospital's distinct part psychiatric unit's uninsured days by the sum of all qualifying psychiatric unit's uninsured days and multiplying by \$1,000,000;

b. dividing each qualifying freestanding psychiatric hospital's uninsured days by the sum of all qualifying freestanding psychiatric hospital's uninsured days and multiplying by \$1,000,000.

H. The DSH payment shall be made as an annual lump sum payment.

I. Hospitals qualifying as non-rural community hospitals in state fiscal year 2007-2008 and subsequent years may also qualify in the federally mandated statutory hospital category.

J. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:655 (April 2008), amended LR 34:2402 (November 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§2705. Small Rural Hospitals

A. - D.1.b. ...

2. Additional payments shall only be made after finalization of the CMS mandated DSH audit for the state fiscal year. Payments shall be limited to the aggregate amount recouped from small rural hospitals based on these reported audit results. If the small rural hospitals' aggregate amount of underpayments reported per the audit results exceeds the aggregate amount overpaid, the payment redistribution to underpaid shall be paid on a pro rata basis calculated using each hospital's amount underpaid divided by the sum of underpayments for all small rural hospitals.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:657 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§2707. Public State-Operated Hospitals

A. ...

B. DSH payments to individual public state-owned or operated hospitals shall be up to 100 percent of the hospital's net uncompensated costs. Final payment shall be made in accordance with final uncompensated care costs as calculated per the CMS mandated audit for the state fiscal year.

C. - D.2.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:658 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1201#058

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Federally Qualified Health Centers
Fluoride Varnish Applications
(LAC 50:XI.10301 and 10701)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XI.10301 and §10701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing federally qualified health centers (FQHCs) to provide Medicaid reimbursement for diabetes self-management training services and to reorganize the existing provisions governing provider participation and services in a more clear and concise manner in the *Louisiana Administrative Code (Louisiana Register, Volume 37, Number 9)*. The department published an Emergency Rule which amended the September 20, 2011 Rule to adopt provisions for the coverage of fluoride varnish application services rendered to Medicaid recipients (*Louisiana Register Volume 37, Number 11*). The department now proposes to amend the December 1, 2011 Emergency Rule to clarify the provisions governing the scope of services for fluoride varnish applications. This action is being taken to promote the health and welfare of Medicaid recipients.

Effective January 20, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the December 1, 2011 Emergency Rule governing federally qualified health centers.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XI. Clinic Services

Subpart 13. Federally-Qualified Health Centers

Chapter 103. Services

§10301. Scope of Services

A. - B.1. ...

C. Effective December 1, 2011, the department shall provide coverage for fluoride varnish applications performed in the FQHC. This service shall be limited to recipients from six months through five years of age. Fluoride varnish applications may be covered once every six months per Medicaid recipient.

1. Fluoride varnish applications shall be reimbursed when performed in the FQHC by:

- a. the appropriate dental providers;
- b. physicians;
- c. physician assistants;
- d. nurse practitioners;
- e. registered nurses; or
- f. licensed practical nurses.

2. All participating staff shall review the Smiles for Life training module for fluoride varnish and successfully pass the post assessment. All staff involved in the varnish application must be deemed as competent to perform the service by the FQHC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2328 (October 2004), repromulgated LR 30:2487 (November 2004), amended LR 32:1901 (October 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2927 (September 2011), LR 38:

Chapter 107. Reimbursement Methodology

§10701. Prospective Payment System

A. - B.3.a. ...

4. Effective for dates of service on or after December 1, 2011, the Medicaid Program shall include coverage for fluoride varnish applications in the FQHC encounter rate.

a. Fluoride varnish applications shall only be reimbursed to the FQHC when performed on the same date of service as an office visit or preventative screening. Separate encounters for fluoride varnish services are not permitted and the application of fluoride varnish does not constitute an encounter visit.

C. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1902 (October 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2630 (September 2011), LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1201#054

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Bureau of Health Services Financing
and**

Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Children's Choice

Money Follows the Person Rebalancing Demonstration
Extension

(LAC 50:XXI.11107)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with

Developmental Disabilities amend LAC 50:XXI.11107 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities adopted provisions in the Children's Choice Waiver for the allocation of additional waiver opportunities for the Money Follows the Person Rebalancing Demonstration Program (*Louisiana Register*, Volume 35, Number 9). The department promulgated an Emergency Rule which amended the provisions of the Children's Choice Waiver to provide for the allocation of waiver opportunities for children who have been identified by the Office for Citizens with Developmental Disabilities regional offices and human services authorities and districts as meeting state-funded family support criteria for priority level 1 and 2, and needing more family support services than what is currently available through state-funded family support services (*Louisiana Register*, Volume 36, Number 9).

The allocation of opportunities for the Money Follows the Person Rebalancing Demonstration Program was scheduled to end September 30, 2011. Section 2403 of the Affordable Care Act of 2010 authorized an extension of the Money Follows the Person Rebalancing Demonstration Program until September 30, 2016. The department promulgated an Emergency Rule which amended the provisions of the Children's Choice Waiver in order to allow allocation of waiver opportunities until September 30, 2016 (*Louisiana Register*, Volume 37, Number 9). This Emergency Rule is being promulgated to continue the provisions of the September 28, 2011 Emergency Rule. This action is being taken to secure enhanced federal funding.

Effective January 29, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend the provisions governing the allocation of opportunities in the Children's Choice Waiver.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services

Waivers

Subpart 9. Children's Choice

Chapter 111. General Provisions §11107. Allocation of Waiver Opportunities

A. - B. ...

1. The MFP Rebalancing Demonstration will stop allocation of opportunities on September 30, 2016.

a. In the event that an MFP Rebalancing Demonstration opportunity is vacated or closed before September 30, 2016, the opportunity will be returned to the MFP Rebalancing Demonstration pool and an offer will be made based upon the approved program guidelines.

b. In the event that an MFP Rebalancing Demonstration opportunity is vacated or closed after September 30, 2016, the opportunity will cease to exist.

C. - C.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:1892 (September 2009), amended LR 38:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1201#059

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services
Pre-Admission Certification
(LAC 50:V.301)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.301 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing repealed the December 20, 1985 Rule governing the reimbursement methodology and inpatient admission criteria for designated surgical procedures performed in an ambulatory (outpatient) setting, and amended the provisions of the June 20, 1994 Rule governing registration, length of stay assignments and pre-admission certification for inpatient hospital services to require pre-admission certification for all admissions to non-state and state operated acute care general hospitals (*Louisiana Register*, Volume 36, Number 1). The January 20, 2010 Rule also repromulgated the provisions contained in the June 20, 1994 Rule and a June 20, 2001 Rule governing pre-admission certification and length of stay assignments for inpatient psychiatric services for inclusion in the *Louisiana Administrative Code*.

The department determined that it was necessary to amend the provisions of the January 20, 2010 Rule to revise the provisions governing extensions of the initial length of stay assignment for inpatient hospital admissions (*Louisiana Register*, Volume 36, Number 2). This Emergency Rule is being promulgated to continue the provisions of the January 26, 2010 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients who rely on the services provided by acute care hospitals.

Effective January 22, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the

provisions governing pre-admission certification for inpatient hospital services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospitals

Chapter 3. Pre-Admission Certification

§301. General Provisions

A. - F.2. ...

a. Subsequent approved extensions may be submitted for consideration referencing customized data, Southern Regional and national length of stay data.

F.3. - J.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:66 (January 2010), amended LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1201#060

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services
Small Rural Hospitals
Low Income and Needy Care Collaboration
(LAC 50:V.1125)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.1125 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

In compliance with Act 327 of the 2007 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the reimbursement methodology governing state fiscal year 2009 Medicaid payments to small rural hospitals for inpatient acute care services and psychiatric services (*Louisiana Register*, Volume 35, Number 5). The department promulgated an Emergency Rule which amended the provisions governing the

reimbursement methodology for inpatient hospital services to provide for a supplemental Medicaid payment to small rural hospitals that enter into an agreement with a state or local governmental entity for the purpose of providing healthcare services to low income and needy patients (*Louisiana Register*, Volume 37, Number 11). This Emergency Rule is being promulgated to continue the provisions of the October 20, 2011 Emergency Rule. This action is being taken to secure new federal funding and to promote the public health and welfare of Medicaid recipients by ensuring sufficient provider participation in the Hospital Services Program.

Effective February 18, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services rendered by small rural hospitals.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part V. Hospital Services
Subpart 1. Inpatient Hospital Services
Chapter 11. Rural, Non-State Hospitals
Subchapter B. Reimbursement Methodology
§1125. Small Rural Hospitals

A. - D. ...

E. Low Income and Needy Care Collaboration. Effective for dates of service on or after October 20, 2011, quarterly supplemental payments shall be issued to qualifying non-state acute care hospitals for inpatient services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-state hospital must be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement.

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

b. A Low Income and Needy Care Collaboration Agreement is defined as an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the inpatient services rendered during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital's inpatient Medicaid billed charges and Medicaid payments the hospital receives for covered inpatient services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:955 (May 2009), amended LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1201#061

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Intermediate Care Facilities for Persons with
Developmental Disabilities—Public Facilities
Reimbursement Methodology
(LAC 50:VII.32965-32969)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:VII.32965-32969 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for state-operated intermediate care facilities for persons with developmental disabilities (ICFs/DD) and established payments using a formula that established per diem rates at the Medicare upper payment limit for these services (*Louisiana Register*, Volume 29, Number 11). Upon submission of the corresponding State Plan amendment to the Centers for Medicare and Medicaid Services for review and approval, the department determined that it was also necessary to establish provisions in the Medicaid State Plan governing the reimbursement methodology for quasi-public ICFs/DD. The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for public ICFs/DD to establish a transitional Medicaid reimbursement rate for community homes that are being privatized (*Louisiana Register*, Volume 36, Number 8). This Emergency Rule also adopted all of the provisions governing reimbursements to state-owned and operated facilities and quasi-public facilities in a codified format for inclusion in the *Louisiana Administrative Code*. The department promulgated an Emergency Rule which amended the August 1, 2010 Emergency Rule to revise the provisions governing transitional rates for public facilities (*Louisiana Register*, Volume 37, Number 6). The department promulgated an Emergency Rule which amended the July 1, 2011 Emergency Rule to clarify the provisions for facilities

servicing a high concentration of medically fragile individuals (*Louisiana Register*, Volume 37, Number 10). This Emergency Rule is being promulgated to continue the provisions of the October 20, 2011 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective February 18, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for public intermediate care facilities for persons with developmental disabilities.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care

Subpart 3. Intermediate Care Facilities for Persons with Developmental Disabilities

Chapter 329. Reimbursement Methodology

Subchapter C. Public Facilities

§32965. State-Owned and Operated Facilities

A. Medicaid payments to state-owned and operated intermediate care facilities for persons with developmental disabilities are based on the Medicare formula for determining the routine service cost limits as follows:

1. calculate each state-owned and operated ICF/DD's per diem routine costs in a base year;
2. calculate 112 percent of the average per diem routine costs; and
3. inflate 112 percent of the per diem routine costs using the skilled nursing facility (SNF) market basket index of inflation.

B. Each state-owned and operated facility's capital and ancillary costs will be paid by Medicaid on a "pass-through" basis.

C. The sum of the calculations for routine service costs and the capital and ancillary costs "pass-through" shall be the per diem rate for each state-owned and operated ICF/DD. The base year cost reports to be used for the initial calculations shall be the cost reports for the fiscal year ended June 30, 2002.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§32967. Quasi-Public Facilities

A. Medicaid payment to quasi-public facilities is a facility-specific prospective rate based on budgeted costs. Providers shall be required to submit a projected budget for the state fiscal year beginning July 1.

B. The payment rates for quasi-public facilities shall be determined as follows:

1. determine each ICF/DD's per diem for the base year beginning July 1;
2. calculate the inflation factor using an average CPI index applied to each facility's per diem for the base year to determine the inflated per diem;
3. calculate the median per diem for the facilities' base year;
4. calculate the facility's routine cost per diem for the SFY beginning July 1 by using the lowest of the budgeted, inflated or median per diem rates plus any additional allowances; and
5. calculate the final approved per diem rate for each facility by adding routine costs plus any "pass through"

amounts for ancillary services, provider fees, and grant expenses.

C. Providers may request a final rate adjustment subject to submission of supportive documentation and approval by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§32969. Transitional Rates for Public Facilities

A. Effective August 1, 2010, the department shall establish a transitional Medicaid reimbursement rate of \$302.08 per day per individual for a public ICF/DD community home that is transitioning to a private facility, provided that the community home meets the following criteria. The community home:

1. shall have a fully executed Cooperative Endeavor Agreement (CEA) with the Office for Citizens with Developmental Disabilities for the private operation of the facility;
2. shall have a high concentration of medically fragile individuals being served, as determined by the department;
 - a. for purposes of these provisions, a medically fragile individual shall refer to an individual who has a medically complex condition characterized by multiple, significant medical problems that require extended care;
3. incurs or will incur higher existing costs not currently captured in the private ICF/DD rate methodology; and
4. shall have no more than six beds.

B. The transitional Medicaid reimbursement rate shall only be for the period of transition, which is defined as the term of the CEA or a period of three years, whichever is shorter.

C. The transitional Medicaid reimbursement rate is all-inclusive and incorporates the following cost components:

1. direct care staffing;
2. medical/nursing staff, up to 23 hours per day;
3. medical supplies;
4. transportation;
5. administrative; and
6. the provider fee.

D. If the community home meets the criteria in §32969.C and the individuals served require that the community home has a licensed nurse at the facility 24 hours per day, seven days per week, the community home may apply for a supplement to the transitional rate. The supplement to the rate shall not exceed \$25.33 per day per individual.

E. The total transitional Medicaid reimbursement rate, including the supplement, shall not exceed \$327.41 per day per individual.

F. The transitional rate and supplement shall not be subject to the following:

1. inflationary factors or adjustments;
2. rebasing;
3. budgetary reductions; or
4. other rate adjustments.

G. Effective July 1, 2011, the transitional rate for public facilities over 50 beds that are privatizing shall be restored to the rates in effect on January 1, 2009 for a six to eight bed facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1201#062

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Nursing Facilities
Reimbursement Methodology
Minimum Data Set Assessments
(LAC 50:VII.1301, 1307, 1313 and 1315)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:VII.1301, §1307, §1313 and §1315 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

In compliance with Act 694 of the 2001 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repealed the provisions governing the prospective reimbursement methodology for private nursing facilities and established a new reimbursement methodology based on a case-mix price-based reimbursement system for private and public nursing facilities (*Louisiana Register*, Volume 28, Number 6). The department amended the June 20, 2002 Rule to incorporate new definitions and revised current definitions governing nursing facility reimbursements. The December 20, 2002 Rule also revised the provisions governing the submission of cost reports and adopted provisions governing verification of minimum data set (MDS) assessments and the appeal process for dispute of MDS review findings (*Louisiana Register*; Volume 28, Number 12).

The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for nursing facilities to revise the provisions governing MDS assessments in order to comply with new federal requirements (*Louisiana Register*; Volume 36, Number 10). The October 20, 2010 Emergency Rule also changed the date that MDS assessments are due. This Emergency Rule is being promulgated to continue the provisions of the October 20, 2010 Emergency Rule. This action is being taken to avoid sanctions from the Centers for Medicare and Medicaid Services for noncompliance with the federal mandate to utilize the new MDS assessment data.

Effective February 18, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends

the provisions governing the reimbursement methodology for nursing facilities to revise the provisions governing MDS assessments.

Title 50

PUBLIC HEALTH-MEDICAL ASSISTANCE

Part VII. Long Term Care Services

Subpart 1. Nursing Facilities

Chapter 13. Reimbursement

§1301. Definitions

* * *

Assessment Reference Date—the date on the Minimum Data Set (MDS) used to determine the due date and delinquency of assessments. This date is used in the case-mix reimbursement system to determine the last assessment for each resident present in the facility and is included in the quarterly case-mix report.

* * *

Case-Mix Index—a numerical value that describes the resident's relative resource use within the groups under the Resource Utilization Group (RUG-III) classification system, or its successor, prescribed by the department based on the resident's MDS assessments. Two average CMIs will be determined for each facility on a quarterly basis, one using all residents (the facility average CMI) and one using only Medicaid residents (the Medicaid average CMI).

Case-Mix MDS Documentation Review (CMDR)—a review of original legal medical record documentation on a randomly selected MDS assessment sample. The original legal medical record documentation supplied by the nursing facility is to support certain reported values that resulted in a specific RUG classification. The review of the documentation provided by the nursing facility will result in the RUG classification being supported or unsupported.

* * *

Delinquent MDS Resident Assessment—an MDS assessment that is more than 121 days old, as measured by the Assessment Reference Date (ARD) field on the MDS.

* * *

Facility Cost Report Period Case-Mix Index—the average of quarterly facility-wide average case-mix indices, carried to four decimal places. The quarters used in this average will be the quarters that most closely coincide with the facility's cost reporting period that is used to determine the medians. This average includes any revisions made due to an on-site CMDR.

Example: A January 1, 2011-December 31, 2011 cost report period would use the facility-wide average case-mix indices calculated for March 31, 2011, June 30, 2011, September 30, 2011 and December 31, 2011.

1. Repealed.

Facility-Wide Average Case-Mix Index—the simple average, carried to four decimal places, of all resident case-mix indices based on the last day of each calendar quarter. If a facility does not have any residents as of the last day of a calendar quarter or the average resident case-mix indices appear invalid due to temporary closure or other circumstances, as determined by the department, a statewide average case-mix index using occupied and valid statewide facility case-mix indices may be used.

Final Case-Mix Index Report (FCIR)—the final report that reflects the acuity of the residents in the nursing facility

on the last day of the calendar quarter, referred to as the point-in-time.

* * *

Minimum Data Set (MDS)—a core set of screening and assessment data, including common definitions and coding categories, that form the foundation of the comprehensive assessment for all residents of long-term care facilities certified to participate in the Medicaid Program. The items in the MDS standardize communication about resident problems, strengths, and conditions within facilities, between facilities, and between facilities and outside agencies. The Louisiana system will employ the current MDS assessment required and approved by the Centers for Medicare and Medicaid Services (CMS).

MDS Supportive Documentation Guidelines—the department’s publication of the minimum medical record documentation guidelines for the MDS items associated with the RUG-III or its successor classification system. These guidelines shall be maintained by the department and updated and published as necessary.

On-Site MDS Review—Repealed.

* * *

Point-in-Time—Repealed.

Preliminary Case Mix Index Report (PCIR)—the preliminary report that reflects the acuity of the residents in the nursing facility on the last day of the calendar quarter.

* * *

RUG-III Resident Classification System—the resource utilization group used to classify residents. When a resident classifies into more than one RUG-III, or its successor’s group, the RUG-III or its successor’s group with the greatest CMI will be utilized to calculate the facility average CMI and Medicaid average CMI.

Summary Review Results Letter—a letter sent to the nursing facility that reports the final results of the case-mix MDS documentation review and concludes the review.

1. The Summary Review Results letter will be sent to the nursing facility within 10 business days after the final exit conference date.

* * *

Unsupported MDS Resident Assessment—an assessment where one or more data items that are used to classify a resident pursuant to the RUG-III, 34-group, or its successor’s resident classification system is not supported according to the MDS supporting documentation guidelines and a different RUG-III, or its successor, classification would result; therefore, the MDS assessment would be considered “unsupported.”

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1790 (August 2002), amended LR 28:2537 (December 2002), LR 32:2262 (December 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§1307. Case-Mix Index Calculation

A. The Resource Utilization Groups-III (RUG-III) Version 5.20, 34-group, or its successor, index maximizer model shall be used as the resident classification system to determine all case-mix indices, using data from the

minimum data set (MDS) submitted by each facility. Standard Version 5.20, or its successor, case-mix indices developed by CMS shall be the basis for calculating average case-mix indices to be used to adjust the direct care cost component. Resident assessments that cannot be classified to a RUG-III group, or its successor, will be excluded from the average case-mix index calculation.

B. Effective with the January 1, 2011 rate setting, each resident in the facility, with a completed and submitted assessment, shall be assigned a RUG-III, 34-group, or its successor, on the last day of each calendar quarter. The RUG-III group, or its successor, is calculated based on the resident’s most current assessment, available on the last day of each calendar quarter, and shall be translated to the appropriate case-mix index. From the individual resident case-mix indices, two average case-mix indices for each Medicaid nursing facility shall be determined four times per year based on the last day of each calendar quarter.

C. Effective with the January 1, 2011 rate setting, the facility-wide average case-mix index is the simple average, carried to four decimal places, of all resident case-mix indices. The Medicaid average case-mix index is the simple average, carried to four decimal places, of all indices for residents where Medicaid is known to be the per diem payor source on the last day of the calendar quarter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1792 (August 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§1313. Case-Mix Minimum Data Set Documentation Reviews and Case-Mix Index Reports

A. The department or its contractor shall provide each nursing facility with the Preliminary Case-Mix Index Report (PCIR) by approximately the fifteenth day of the second month following the beginning of a calendar quarter. The PCIR will serve as notice of the MDS assessments transmitted and provide an opportunity for the nursing facility to correct and transmit any missing MDS assessments or tracking records or apply the CMS correction policy where applicable. The department or its contractor shall provide each nursing facility with a Final Case-Mix Index Report (FCIR) (point-in-time) utilizing MDS assessments after allowing the facilities a reasonable amount of time to process their corrections (approximately two weeks).

1. If the department or its contractor determines that a nursing facility has delinquent MDS resident assessments, for purposes of determining both average CMIs, such assessments shall be assigned the case-mix index associated with the RUG-III group “BC1-Delinquent” or its successor. A delinquent MDS shall be assigned a CMI value equal to the lowest CMI in the RUG-III, or its successor, classification system.

B. The department or its contractor shall periodically review the MDS supporting documentation maintained by nursing facilities for all residents, regardless of payer type. Such reviews shall be conducted as frequently as deemed necessary by the department. The department shall notify facilities of the Case-Mix MDS Documentation Reviews (CMDR) not less than two business days prior to the start of

the review date and a FAX, electronic mail or other form of communication will be provided to the administrator and MDS coordinator on the same date identifying possible documentation that will be required to be available at the start of the on-site CMDR.

1. The department or its contractor shall review a sample of MDS resident assessments equal to the greater of 20 percent of the occupied bed size of the facility or 10 assessments and shall include those transmitted assessments posted on the most current FCIR. The CMDR will determine the percentage of assessments in the sample that are unsupported MDS resident assessments. The department may review additional or alternative MDS assessments, if it is deemed necessary.

2. When conducting the CMDR, the department or its contractor shall consider all MDS supporting documentation that is provided by the nursing facility and is available to the RN reviewers prior to the exit conference. MDS supporting documentation that is provided by the nursing facility after the exit conference shall not be considered for the CMDR.

3. Upon request by the department or its contractor, the nursing facility shall be required to produce a computer-generated copy of the transmitted MDS assessment which shall be the basis for the CMDR.

4. After the close of the CMDR, the department or its contractor will submit its findings in a summary review results (SRR) letter to the facility within 10 business days following the exit conference.

5. The following corrective action will apply to those facilities with unsupported MDS resident assessments identified during an on-site CMDR.

a. If the percentage of unsupported assessments in the initial on-site CMDR sample is greater than 25 percent, the sample shall be expanded, and shall include the greater of 20 percent of the remaining resident assessments or 10 assessments.

b. If the percentage of unsupported MDS assessments in the total sample is equal to or less than the threshold percentage as shown in column (B) of the table in Subparagraph e below, no corrective action will be applied.

c. If the percentage of unsupported MDS assessments in the total sample is greater than the threshold percentage as shown in column (B) of the table in Subparagraph e below, the RUG-III, or its successor, classification shall be recalculated for the unsupported MDS assessments based upon the available documentation obtained during the CMDR process. The facility's CMI and resulting Medicaid rate shall be recalculated for the quarter in which the FCIR was used to determine the Medicaid rate. A follow-up CMDR process described in Subparagraphs d and e may be utilized at the discretion of the department.

d. Those providers exceeding the thresholds (see column (B) of the table in Subparagraph e during the initial on-site CMDR will be given 90 days to correct their assessing and documentation processes. A follow-up CMDR may be performed at the discretion of the department at least 30 days after the facility's 90-day correction period. The department or its contractor shall notify the facility not less than two business days prior to the start of the CMDR date. A FAX, electronic mail, or other form of communication will be provided to the administrator and MDS coordinator

on the same date identifying documentation that must be available at the start of the on-site CMDR.

e. After the follow-up CMDR, if the percentage of unsupported MDS assessments in the total sample is greater than the threshold percentage as shown in column (B) of the following table, the RUG-III, or its successor, classification shall be recalculated for the unsupported MDS assessments based upon the available documentation obtained during the CMDR process. The facility's CMI and resulting Medicaid rate shall be recalculated for the quarter in which the FCIR was used to determine the Medicaid rate. In addition, facilities found to have unsupported MDS resident assessments in excess of the threshold in Column (B) of the table below may be required to enter into an MDS Documentation Improvement Plan with the Department of Health and Hospitals. Additional follow-up CMDR may be conducted at the discretion of the department.

Effective Date (A)	Threshold Percent (B)
January 1, 2003	Educational
January 1, 2004	40%
January 1, 2005	35%
January 1, 2006 and beyond	25%

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2537 (December 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§1315. Appeal Process

A. If the facility disagrees with the CMDR findings, a written request for an informal reconsideration must be submitted to the department or its contractor within 15 business days of the facility's receipt of the CMDR findings in the SRR letter. Otherwise, the results of the CMDR findings are considered final and not subject to appeal. The department or its contractor will review the facility's informal reconsideration request within 10 business days of receipt of the request and will send written notification of the final results of the reconsideration to the facility. No appeal of findings will be accepted until after communication of final results of the informal reconsideration process.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2538 (December 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A

copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1201#063

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Outpatient Hospital Services
Diabetes Self-Management Training
(LAC 50:V.Chapter 63)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.Chapter 63 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Act 11 of the 2010 Regular Session of the Louisiana Legislature authorized the Department of Health and Hospitals, through its primary and preventive care activity, to provide reimbursement to providers for rendering services that will educate and encourage Medicaid enrollees to obtain appropriate preventive and primary care in order to improve their overall health and quality of life.

In keeping with the intent of Act 11, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which adopted provisions in the Hospital Program to provide Medicaid reimbursement for diabetes self-management training (DSMT) services rendered in an outpatient hospital setting (*Louisiana Register*, Volume 37, Number 6). This Emergency Rule is being promulgated to continue the provisions of the June 20, 2011 Emergency Rule. It is anticipated that this new service will promote improved patient self-management skills which will reduce diabetes-related complications that adversely affect quality of life, and subsequently reduce Medicaid costs associated with the care of recipients diagnosed with diabetes-related illnesses. This action is being taken to promote the health and welfare of Medicaid recipients diagnosed with diabetes and to ultimately reduce the Medicaid costs associated with their care.

Effective February 17, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the Hospital Program to provide coverage for diabetes self-management training services rendered in an outpatient hospital setting.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 5. Outpatient Hospital Services

Chapter 63. Diabetes Education Services

Subchapter A. General Provisions

§6301. Introduction

A. Effective for dates of service on or after February 20, 2011, the department shall provide coverage of diabetes self-

management training (DSMT) services rendered to Medicaid recipients diagnosed with diabetes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§6303. Scope of Services

A. DSMT services shall be comprised of one hour of individual instruction and nine hours of group instruction on diabetes self-management.

B. Service Limits. Recipients shall receive up to 10 hours of services during the first 12-month period following the initial order. After the first 12-month period has ended, recipients shall only be eligible for two hours of individual instruction on diabetes self-management every 12 months.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§6305. Provider Participation

A. In order to receive Medicaid reimbursement, outpatient hospitals must have a DSMT program that meets the quality standards of one of the following accreditation organizations:

1. the American Diabetes Association;
2. the American Association of Diabetes Educators; or
3. the Indian Health Service.

B. All DSMT programs must adhere to the national standards for diabetes self-management education.

1. Each member of the instructional team must:
a. be a certified diabetes educator (CDE) certified by the National Certification Board for Diabetes Educators; or

b. have recent didactic and experiential preparation in education and diabetes management.

2. At a minimum, the instructional team must consist of one the following professionals who is a CDE:

- a. a registered dietician;
- b. a registered nurse; or
- c. a pharmacist.

3. All members of the instructional team must obtain the nationally recommended annual continuing education hours for diabetes management.

C. Members of the instructional team must be either employed by or have a contract with a Medicaid enrolled outpatient hospital that will submit the claims for reimbursement of outpatient DSMT services rendered by the team.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Subchapter B. Reimbursement

§6311. Reimbursement Methodology

A. Effective for dates of service on or after February 20, 2011, the Medicaid Program shall provide reimbursement for diabetes self-management training services rendered by qualified health care professionals in an outpatient hospital setting.

B. Reimbursement for DSMT services shall be a flat fee based on the appropriate Healthcare Common Procedure Coding (HCPC) code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1201#064

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Bureau of Health Services Financing
and
Office of Aging and Adult Services**

Personal Care Services—Long-Term
Policy Clarifications and Service Limit Reduction
(LAC 50:XV.12901-12909 and 12911-12915)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend LAC 50:XV.12901-12909 and §§12911-12915 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Senate Resolution 180 and House Resolution 190 of the 2008 Regular Session of the Louisiana Legislature directed the department to develop and implement cost control mechanisms to provide the most cost-effective means of financing the Long-Term Personal Care Services (LT-PCS) Program. In compliance with these legislative directives, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amended the provisions governing the LT-PCS Program to: 1) implement uniform needs-based assessments for authorizing service units; 2) reduce the limit on LT-PCS service hours; 3) mandate that providers must show cause for refusing to serve clients; and 4) incorporate provisions governing an allocation of weekly service hours (*Louisiana Register*, Volume 35, Number 11).

The department promulgated an Emergency Rule which amended the provisions governing long-term personal care services to: 1) establish provisions that address requests for services; 2) revise the eligibility criteria for LT-PCS; 3) clarify the provisions governing restrictions for paid direct care staff and the place of service; and 4) reduce the maximum allowed service hours (*Louisiana Register*, Volume 36, Number 8). The department promulgated an Emergency Rule which amended the provisions of the

September 5, 2010 Emergency Rule to clarify the provisions of the Rule (*Louisiana Register*, Volume 36, Number 12). The department promulgated an Emergency Rule which amended the provisions of the December 20, 2010 Emergency Rule to further clarify the provisions of the Rule (*Louisiana Register*, Volume 37, Number 4). The department promulgated an Emergency Rule which amended the provisions of the April 20, 2011 Emergency Rule to bring these provisions in line with current licensing standards (*Louisiana Register*, Volume 37, Number 11). The department now proposes to amend the November 20, 2011 Emergency Rule to clarify the provisions governing the staffing requirements for LT-PCS. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective January 20, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend the provisions of the November 20, 2011 Emergency Rule governing long-term personal care services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 9. Personal Care Services

Chapter 129. Long Term Care

§12901. General Provisions

A. The purpose of personal care services is to assist individuals with functional impairments with their daily living activities. Personal care services must be provided in accordance with an approved service plan and supporting documentation. In addition, personal care services must be coordinated with the other Medicaid and non-Medicaid services being provided to the recipient and will be considered in conjunction with those other services.

B. Each recipient requesting or receiving long-term personal care services (LT-PCS) shall undergo a functional eligibility screening utilizing an eligibility screening tool called the Level of Care Eligibility Tool (LOCET), or a subsequent eligibility tool designated by the Office of Aging and Adult Services (OAAS).

C. Each LT-PCS applicant/recipient shall be assessed using a uniform assessment tool called the Minimum Data Set-Home Care (MDS-HC) or a subsequent assessment tool designated by OAAS. The MDS-HC is designed to verify that an individual meets eligibility qualifications and to determine resource allocation while identifying his/her need for support in performance of activities of daily living (ADLs) and instrumental activities of daily living (IADLs). The MDS-HC assessment generates a score which measures the recipient's degree of self-performance of late-loss activities of daily living during the period just before the assessment.

1. The late-loss ADLs are eating, toileting, transferring and bed mobility. An individual's assessment will generate a score which is representative of the individual's degree of self-performance on these four late-loss ADLs.

2. - 7. Repealed.

D. Based on the applicant/recipient's uniform assessment score, he/she is assigned to a level of support category and is eligible for a set allocation of weekly service hours associated with that level.

1. If the applicant/recipient disagrees with his/her allocation of weekly service hours, the applicant/recipient or his/her responsible representative may request a fair hearing to appeal the decision.

2. The applicant/recipient may qualify for more hours if it can be demonstrated that:

a. one or more answers to the questions involving late-loss ADLs are incorrect as recorded on the assessment; or

b. he/she needs additional hours to avoid entering into a nursing facility.

E. Requests for personal care services shall be accepted from the following individuals:

1. a Medicaid recipient who wants to receive personal care services;

2. an individual who is legally responsible for a recipient who may be in need of personal care services; or

3. a responsible representative designated by the recipient to act on his/her behalf in requesting personal care services.

F. Each recipient who requests PCS has the option to designate a responsible representative. For purposes of these provisions, a responsible representative shall be defined as the person designated by the recipient to act on his/her behalf in the process of accessing and/or maintaining personal care services.

1. The appropriate form authorized by OAAS shall be used to designate a responsible representative.

a. The written designation of a responsible representative does not give legal authority for that individual to independently handle the recipient's business without his/her involvement.

b. The written designation is valid until revoked by the recipient. To revoke the written designation, the revocation must be submitted in writing to OAAS or its designee.

2. The functions of a responsible representative are to:

a. assist and represent the recipient in the assessment, care plan development and service delivery processes; and

b. to aid the recipient in obtaining all necessary documentation for these processes.

3 - 4. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:911 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 32:2082 (November 2006), LR 34:2577 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2450 (November 2009), LR 38:

§12902. Participant Direction Option

A. The Office of Aging and Adult Services implements a pilot program, the Louisiana Personal Options Program (La POP), which will allow recipients who receive long term personal care services (LT-PCS) to have the option of utilizing an alternative method to receive and manage their services. Recipients may direct and manage their own services by electing to participate in La POP, rather than

accessing their services through a traditional personal care agency.

1. La POP shall be implemented through a phase-in process in Department of Health and Hospitals administrative regions designated by OAAS.

A.2. - B.1. ...

2. With the assistance of a services consultant, participants develop a personal support plan based on their approved plan of care and choose the individuals they wish to hire to provide the services.

C. - E.1. ...

2. Change in Condition. The participant's ability to direct his/her own care diminishes to a point where he/she can no longer do so and there is no responsible representative available to direct the care.

3. Misuse of Monthly Allocation of Funds. The LA POP participant or his/her responsible representative uses the monthly budgeted funds to purchase items unrelated to personal care needs or otherwise misappropriate the funds.

4. Failure to Provide Required Documentation. The participant or his/her responsible representative fails to complete and submit employee time sheets in a timely and accurate manner, or provide required documentation of expenditures and related items as prescribed in the Louisiana Personal Options Program's Roles and Responsibility agreement.

5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2578 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 38:

§12903. Covered Services

A. Personal care services are defined as those services that provide assistance with the distinct tasks associated with the performance of the activities of daily living (ADLs) and the instrumental activities of daily living (IADLs). Assistance may be either the actual performance of the personal care task for the individual or supervision and prompting so the individual performs the task by him/herself. ADLs are those personal, functional activities required by the recipient. ADLs include tasks such as:

1. - 5. ...

6. ambulation;

7. toileting; and

8. bed mobility.

B. IADLs are those activities that are considered essential, but may not require performance on a daily basis. IADLs cannot be performed in the recipient's home when he/she is absent from the home. IADLs include tasks such as:

1. light housekeeping;

2. food preparation and storage;

3. shopping;

4. laundry;

5. assisting with scheduling medical appointments when necessary;

6. accompanying the recipient to medical appointments when necessary;

7. assisting the recipient to access transportation;

8. reminding the recipient to take his/her medication as prescribed by the physician; and

9. medically non-complex tasks where the direct service worker has received the proper training pursuant to R.S. 37:1031-1034.

C. Emergency and nonemergency medical transportation is a covered Medicaid service and is available to all recipients. Non-medical transportation is not a required component of personal care services. However, providers may choose to furnish transportation for recipients during the course of providing personal care services. If transportation is furnished, the provider agency must accept any liability for their employee transporting a recipient. It is the responsibility of the provider agency to ensure that the employee has a current, valid driver's license and automobile liability insurance.

1. La POP participants may choose to use some of their monthly budget to purchase non-medical transportation.

a. If transportation is furnished, the participant must accept all liability for their employee transporting them. It is the responsibility of the participant to ensure that the employee has a current, valid driver's license and automobile liability insurance.

D. ...

E. La POP participants may choose to use their services budgets to pay for items that increase their independence or substitute for their dependence on human assistance. Such items must be purchased in accordance with the policies and procedures established by OAAS. G. Personal care services may be provided by one worker for up to three long-term personal care service recipients who live together and who have a common direct service provider.

F. Personal care services may be provided by one worker for up to three long-term personal care service recipients who live together and who have a common direct service provider.

G. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2578 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 38:

§12905. Eligibility Criteria

A. ...

B. Recipients must meet the eligibility criteria established by OAAS or its designee. Personal care services are medically necessary if the recipient:

1. meets the medical standards for admission to a nursing facility and requires limited assistance with at least one or more activities of daily living;

B.2. D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult

Services, LR 32:2082 (November 2006), LR 34:2579 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 38:

§12907. Recipient Rights and Responsibilities

A. - A.2. ...

3. training the individual personal care worker in the specific skills necessary to maintain the recipient's independent functioning while maintaining him/her in the home;

4. developing an emergency component in the plan of care that includes a list of personal care staff who can serve as back-up when unforeseen circumstances prevent the regularly scheduled worker from providing services;

5. - 9. ...

B. Changing Providers. Recipients may request to change PCS agencies without cause once after each three month interval during the service authorization period. Recipients may request to change PCS providers with good cause at any time during the service authorization period. Good cause is defined as the failure of the provider to furnish services in compliance with the plan of care. Good cause shall be determined by OAAS or its designee.

C. In addition to these rights, a La POP participant has certain responsibilities, including:

1. ...

2. notifying the services consultant at the earliest reasonable time of admission to a hospital, nursing facility, rehabilitation facility or any other institution;

2.a. - 8. ...

9. training the direct service worker in the specific skills necessary to maintain the participant's independent functioning to remain in the home;

10. - 13. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:2832 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2579 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 38:

§12909. Standards for Participation

A. - A.1.c. ...

d. any federal or state laws, Rules, regulations, policies and procedures contained in the Medicaid provider manual for personal care services, or other document issued by the department. Failure to do may result in sanctions.

A.2. ...

B. In addition, a Medicaid enrolled agency must:

1. maintain adequate documentation as specified by OAAS, or its designee, to support service delivery and compliance with the approved POC and will provide said documentation at the request of the department or its designee; and

2. assure that all agency staff is employed in accordance with Internal Revenue Service (IRS) and Louisiana Workforce Commission regulations.

3 - 12.c. Repealed.

C. An LT-PCS provider shall not refuse to serve any individual who chooses his agency unless there is documentation to support an inability to meet the

individual's needs, or all previous efforts to provide service and supports have failed and there is no option but to refuse services.

C.1. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:2832 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2579 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2451 (November 2009), amended LR 38:

§12910. La POP Standards for Participation

A. Direct service workers employed under LA POP must meet the same requirements as those hired by a PCS agency.

B. All workers must be employed in accordance with Internal Revenue Service (IRS) and Department of Labor regulations.

B.1. - C. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2580 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 38:

§12911. Staffing Requirements

A. All staff providing direct care to the recipient, whether they are employed by a PCS agency or a recipient participating in La POP, must meet the qualifications for furnishing personal care services per the licensing regulations. The direct service worker shall demonstrate empathy toward the elderly and persons with disabilities, an ability to provide care to these recipients, and the maturity and ability to deal effectively with the demands of the job.

B. - B.3. Repealed.

C. Restrictions

1. The following individuals are prohibited from being reimbursed for providing services to a recipient:

- a. the recipient's spouse;
- b. the recipient's curator;
- c. the recipient's tutor;
- d. the recipient's legal guardian;
- e. the recipient's designated responsible representative; or

f. the person to whom the recipient has given representative and mandate authority (also known as power of attorney).

D. - E.1.b. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2832 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2580 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 38:

§12912. Training

A. Training costs for direct service workers employed by La POP participants shall be paid out of the La POP participant's personal supports plan budget.

B. - H. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2580 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 38:

§12913. Service Delivery

A. Personal care services shall be provided in the recipient's home or in another location outside of the recipient's home if the provision of these services allows the recipient to participate in normal life activities pertaining to the IADLs cited in the plan of care. The recipient's home is defined as the place where he/she resides such as a house, an apartment, a boarding house, or the house or apartment of a family member or unpaid primary care-giver. IADLs cannot be performed in the recipient's home when the recipient is absent from the home.

A.1. - A.4. Repealed.

B. The provision of services outside of the recipient's home does not include trips outside of the borders of the state without written prior approval of OAAS or its designee, through the plan of care or otherwise.

C. Participants are not permitted to receive LT-PCS while living in a home or property owned, operated, or controlled by a provider of services who is not related by blood or marriage to the participant.

C.1. - E. ...

F. It is permissible for an LT-PCS recipient to use his/her approved LT-PCS weekly allotment flexibly provided that it is done so in accordance with the recipient's preferences and personal schedule and is properly documented in accordance with OAAS policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:913 (June 2003), amended LR 30:2833 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2581 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Financing and the Office of Aging and Adult Services, LR 38:

§12915. Service Limitations

A. Personal care services shall be limited to up to 32 hours per week. Authorization of service hours shall be considered on a case-by-case basis as substantiated by the recipient's plan of care and supporting documentation.

B. There shall be no duplication of services.

1. Personal care services may not be provided while the recipient is admitted to or attending a program which provides in-home assistance with IADLs or ADLs or while the recipient is admitted to or attending a program or setting where such assistance is available to the recipient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:913 (June 2003), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2581 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2451 (November 2009), amended LR 38:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1201#055

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Pharmacy Benefits Management Program Maximum Allowable Costs (LAC 50:949)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXIX.949 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the Rules governing the Pharmacy Benefits Management Program in a codified format in Title 50 of the *Louisiana Administrative Code* (*Louisiana Register*, Volume 32, Number 6). The department later promulgated a Rule (*Louisiana Register*, Volume 34, Number 1) amending the provisions of the June 20, 2006 Rule governing methods of payments in order to comply with the directives of Act 801 of the 2006 Regular Session of the Louisiana Legislature, which directed the department to submit a Medicaid State Plan amendment to the Centers for Medicare and Medicaid Services (CMS) to increase the Medicaid dispensing fee on prescription drugs, contingent upon CMS' approval of the proposed amendment. CMS subsequently disapproved the proposed amendment to the Medicaid State Plan that had been submitted in compliance with Act 801. An Emergency Rule was later promulgated to repeal the January 20, 2008 Rule and to restore the repealed provisions of the June 20, 2006 Rule in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 36, Number 1).

Act 10 of the 2009 Regular Session of the Louisiana Legislature provided that the department may redefine the reimbursement methodology for multiple source drugs in establishing the state maximum allowable cost (MAC) in order to control expenditures to the level of appropriations for the Medicaid Program. In accordance with the provisions of Act 10, the department promulgated an Emergency Rule to redefine the Louisiana maximum allowable cost (LMAC) (*Louisiana Register*, Volume 36, Number 1). In addition, the dispensing fee was increased for drugs with an LMAC.

The department subsequently determined that it was necessary to repeal the January 1, 2010 Emergency Rule in

its entirety and amend the provisions governing the methods of payment for prescription drugs to redefine the LMAC (*Louisiana Register*, Volume 36, Number 2). The department promulgated an Emergency Rule to amend the February 1, 2010 Emergency Rule to revise the provisions governing the methods of payment for prescription drugs to further redefine the LMAC and increase the dispensing fee (*Louisiana Register*, Volume 36, Number 3). The department determined that it was necessary to repeal the March 1, 2010 Emergency Rule in its entirety and promulgated an Emergency Rule to amend the provisions governing the methods of payment for prescription drugs to revise the LMAC provisions (*Louisiana Register*, Volume 36, Number 3). This Emergency Rule is being promulgated to continue the provisions of the March 20, 2010 Emergency Rule. This action is being taken to control expenditures in the Medical Assistance Program and to avoid a budget deficit.

Effective February 13, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the methods of payment for prescriptions covered under the Pharmacy Benefits Management Program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXIX. Pharmacy

Chapter 9. Methods of Payment

Subchapter D. Maximum Allowable Costs

§949. Cost Limits

A. - B. ...

1. Louisiana maximum allowable cost (LMAC) is the average actual acquisition cost of a drug, defined as the pharmacist's payment made to purchase a drug product, adjusted by a multiplier of 2.35.

2. LMAC reimbursement will apply to certain multiple source drug products that meet therapeutic equivalency, market availability, and other criteria deemed appropriate by the Louisiana Medicaid Agency. Drugs are subject to LMAC if there are at least two non-innovator multiple source alternative products available that are classified by the FDA as Category "A" in the Approved Drug Products with Therapeutic Equivalence Evaluations.

3. LMAC rates are based on the average actual acquisition cost per drug, adjusted by a multiplier of 2.35, which assures that each rate is sufficient to allow reasonable access by providers to the drug at or below the established LMAC rate. The LMAC rate will apply to all versions of a drug that share the same active ingredient combination, strength, dosage form, and route of administration.

4. Average actual acquisition cost will be determined through a semi-annual collection and review of pharmacy invoices and other information deemed necessary by the Louisiana Medicaid Agency and in accordance with applicable state and federal law.

5. In addition to the semi-annual review, the Louisiana Medicaid Agency will evaluate on an ongoing basis throughout the year and adjust the rates as necessary to reflect prevailing market conditions and to assure that pharmacies have reasonable access to drugs at or below the applicable LMAC rate. Providers shall be given advance notice of any additions, deletions, or adjustments in price. A complete LMAC rate listing will be available to providers and updated periodically.

6. In no case shall a recipient be required to provide payment for any difference in a prescription price that may occur with implementation of the LMAC limit, nor may BHSF use a cost which exceeds the established maximums except for physician certification for brand name drugs.

C. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1065 (June 2006), amended LR 34:88 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1201#065

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Professional Services Program
Diabetes Self-Management Training
(LAC 50:IX.Chapter 7 and 15103)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:IX.Chapter 7 and §15103 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Act 11 of the 2010 Regular Session of the Louisiana Legislature authorized the Department of Health and Hospitals, through its primary and preventive care activity, to provide reimbursement to providers for rendering services that will educate and encourage Medicaid enrollees to obtain appropriate preventive and primary care in order to improve their overall health and quality of life. In keeping with the intent of Act 11, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the Professional Services Program to provide Medicaid reimbursement for diabetes self-management training (DSMT) services (*Louisiana Register*, Volume 37, Number 2). It is anticipated that this new service will promote improved patient self-management skills which will reduce diabetes-related complications that adversely affect quality of life, and subsequently reduce Medicaid costs associated

with the care of recipients diagnosed with diabetes-related illnesses.

The department promulgated an Emergency Rule which amended the provisions of the February 20, 2011 Emergency Rule governing the Professional Services Program in order to clarify the provider participation requirements for the provision of DSMT services (*Louisiana Register*, Volume 37, Number 6). This Emergency Rule is being promulgated to continue the provisions of the June 20, 2011 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients diagnosed with diabetes and to reduce the Medicaid costs associated with their care.

Effective February 17, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing diabetes self-management training services rendered in the Professional Services Program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part IX. Professional Services Program

Subpart 1. General Provisions

Chapter 7. Diabetes Education Services

§701. General Provisions

A. Effective for dates of service on or after February 20, 2011, the department shall provide coverage of diabetes self-management training (DSMT) services rendered to Medicaid recipients diagnosed with diabetes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§703. Scope of Services

A. DSMT shall be comprised of one hour of individual instruction and nine hours of group instruction on diabetes self-management.

B. Service Limits. Recipients shall receive up to 10 hours of services during the first 12-month period beginning with the initial training. After the first 12-month period has ended, recipients shall only be eligible for two hours of individual instruction on diabetes self-management per calendar year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§705. Provider Participation

A. In order to receive Medicaid reimbursement, professional services providers must have a DSMT program that meets the quality standards of one of the following accreditation organizations:

1. the American Diabetes Association;
2. the American Association of Diabetes Educators; or
3. the Indian Health Service.

B. All DSMT programs must adhere to the national standards for diabetes self-management education.

1. Each member of the instructional team must:
 - a. be a certified diabetes educator (CDE) certified by the National Certification Board for Diabetes Educators; or
 - b. have recent didactic and experiential preparation in education and diabetes management.
2. At a minimum, the instructional team must consist of one the following professionals who are also a CDE:
 - a. a registered dietician;

- b. a registered nurse; or
- c. a pharmacist.

3. All members of the instructional team must obtain the nationally recommended annual continuing education hours for diabetes management.

C. Members of the instructional team must be either employed by or have a contract with a Medicaid enrolled professional services provider that will submit the claims for reimbursement of DSMT services rendered by the team.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Subpart 15. Reimbursement

Chapter 151. Reimbursement Methodology

Subchapter A. General Provisions

§15103. Diabetes Education Services

A. Effective for dates of service on or after February 20, 2011, the Medicaid Program shall provide reimbursement for diabetes self-management training services rendered by qualified health care professionals.

B. Reimbursement for DSMT services shall be a flat fee based on the appropriate Healthcare Common Procedure Coding (HCPC) code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1201#066

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Bureau of Health Services Financing**

Professional Services Program
Fluoride Varnish Applications
(LAC 50:IX.Chapter 9 and 15105)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:IX.Chapter 9 and §15105 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule

which amended the provisions governing the Professional Services Program in order to establish Medicaid reimbursement for fluoride varnish application services rendered by qualified providers in a physician office setting (*Louisiana Register*, Volume 37, Number 11). The department anticipates that coverage of this service will reduce and/or prevent future oral health problems that could have a negative effect on the overall health of children and may reduce the Medicaid cost associated with the treatment of such oral health conditions. The department now proposes to amend the December 1, 2011 Emergency Rule to clarify the general provisions and scope of services governing fluoride varnish applications. This action is being taken to promote the health and welfare of Medicaid recipients.

Effective January 20, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the December 1, 2011 Emergency Rule governing the Professional Services Program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part IX. Professional Services Program

Subpart 1. General Provisions

Chapter 9. Fluoride Varnish Application Services

§901. General Provisions

A. Effective for dates of service on or after December 1, 2011, the department shall provide Medicaid coverage of fluoride varnish application services to recipients from six months through five years of age.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§903. Scope of Services

A. Fluoride varnish application services performed in a physician office setting shall be reimbursed by the Medicaid Program when rendered by the appropriate professional services providers.

B. Fluoride varnish applications may be covered once every six months per Medicaid recipient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§905. Provider Participation

A. The entity seeking reimbursement for fluoride varnish application services must be an enrolled Medicaid provider in the Professional Services Program. The following Medicaid enrolled providers may receive reimbursement for fluoride varnish applications:

- 1. physicians;
- 2. nurse practitioners; and
- 3. physician assistants.

B. The following providers who have been deemed as competent to perform the service by the certified physician may perform fluoride varnish application services in a physician office setting:

- 1. the appropriate dental providers;
- 2. physicians;
- 3. physician assistants;
- 4. nurse practitioners;
- 5. registered nurses; or
- 6. licensed practical nurses.

C. Professional service providers shall review the Smiles for Life training module for fluoride varnish and successfully pass the post assessment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Subpart 15. Reimbursement

Chapter 151. Reimbursement Methodology

Subchapter A. General Provisions

§15105. Fluoride Varnish Application Services

A. Effective for dates of service on or after December 1, 2011, the Medicaid Program shall provide reimbursement for fluoride varnish application services rendered by qualified health care professionals in a physician office setting.

B. Reimbursement for fluoride varnish application services shall be a flat fee based on the appropriate HCPCS code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1201#056

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Bureau of Health Services Financing**

Rural Health Clinics
Fluoride Varnish Applications
(LAC 50:XI.16301 and 16701)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XI.16301 and §16701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing rural health clinics (RHCs) to provide Medicaid reimbursement for diabetes self-management training services and to reorganize the existing provisions governing provider participation and services in a more clear and concise manner in the *Louisiana Administrative Code*

(*Louisiana Register*, Volume 37, Number 9). The department promulgated an Emergency Rule which amended the September 20, 2011 Rule to adopt provisions for the coverage of fluoride varnish application services rendered to Medicaid recipients (*Louisiana Register*, Volume 37, Number 11). The department now proposes to amend the December 1, 2011 Emergency Rule to clarify the provisions governing the scope of services for fluoride varnish applications. This action is being taken to promote the health and welfare of Medicaid recipients.

Effective January 20, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the December 1, 2011 Emergency Rule governing rural health clinics.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XI. Clinic Services

Subpart 15. Rural Health Clinics

Chapter 163. Services

§16301. Scope of Services

A. - B.1. ...

C. Effective December 1, 2011, the department shall provide coverage for fluoride varnish applications performed in the RHC. This service shall be limited to recipients from six months through five years of age. Fluoride varnish applications may be covered once every six months per Medicaid recipient.

1. Fluoride varnish applications shall be reimbursed when performed in the RHC by:

- a. the appropriate dental providers;
- b. physicians;
- c. physician assistants;
- d. nurse practitioners;
- e. registered nurses; or
- f. licensed practical nurses.

2. All participating staff shall review the *Smiles for Life* training module for fluoride varnish and successfully pass the post assessment. All staff involved in the varnish application must be deemed as competent to perform the service by the RHC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1904 (October 2006), repromulgated LR 32:2267 (December 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2631 (September 2011), LR 38:

Chapter 167. Reimbursement Methodology

§16701. Prospective Payment System

A. - B.3.a. ...

4. Effective for dates of service on or after December 1, 2011, the Medicaid Program shall include coverage for fluoride varnish applications in the RHC encounter rate.

a. Fluoride varnish applications shall only be reimbursed to the RHC when performed on the same date of service as an office visit or preventative screening. Separate encounters for fluoride varnish services are not permitted and the application of fluoride varnish does not constitute an encounter visit.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1905 (October 2006), repromulgated LR 32:2267 (December 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2632 (September 2011), LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1201#057

DECLARATION OF EMERGENCY

Department of Public Safety and Corrections State Uniform Construction Code Council

Provisional Certificate of Registration Deadline
(LAC 55:VI.903)

In accordance with the provisions of R.S. 40:1730.22, and R.S. 40:1730.35, relative to the authority of the Louisiana State Uniform Construction Code Council (LSUCCC) to promulgate and enforce rules, the LSUCCC finds that an imminent peril to the public welfare requires adoption of a rule upon shorter notice than that provided in R.S. 49:953(A) as the provisional certificates of registration issued pursuant to R.S. 40:1730.35(D) and LAC Title 55, Part VI, Chapter 9, §903 will expire effective January 1, 2012. The expiration of these provisional certificates of registration will result in the loss of over 200 building code enforcement officers statewide. This loss of building code enforcement officers will result in a significant increase in the time it takes to have plans reviewed and construction projects inspected for both commercial and residential construction. The LSUCCC is proposing a 90 day extension of these provisional certificates of registration to allow the affected building code enforcement officers additional time to comply with the certification requirements contained in LAC Title 55, Part VI, Chapter 7, §703. In order to avoid costly delays in both residential and commercial construction, it is necessary to adopt these emergency rules to have this exception in place until the affected building code enforcement officers have time to comply with §703. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect until March 31, 2012. This Emergency Rule is effective December 28, 2011. The Louisiana State Uniform Construction Code is amended as follows.

Title 55

PUBLIC SAFETY

Part VI. Uniform Construction Code

Chapter 9. Temporary Exemption to Certification Requirement

§903. Employment prior to January 1, 2007

A. ...

B. The building code enforcement officers designated in Subsection A above shall have until March 31, 2012, to satisfy the certification requirements as set forth in §703 of this Part. Officials availing themselves of this provision shall obtain the required continuing education units and have attempted at least one International Code Council certification exam by January 1, 2010. Failure to do either shall result in the revocation of that official's provisional certificate of registration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D), and R.S. 40:1730.35(D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:293 (February 2007), amended LR 35:2821 (December 2009), repromulgated LR 36:329 (February 2010), LR 38:

Jill Boudreaux
Undersecretary

1201#004

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2011 Fall Inshore Shrimp Season Closure

In accordance with the emergency provisions of R.S. 49:953 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which allows the Wildlife and Fisheries Commission to delegate to the secretary of the Department the powers, duties and authority to set seasons, and in accordance with a Declaration of Emergency adopted by the Wildlife and Fisheries Commission on August 4, 2011 which authorized the secretary of the Department of Wildlife and Fisheries to close the fall shrimp season when biological and technical data indicate the need to do so or if enforcement problems develop, and following notification to the chairman of the Wildlife and Fisheries Commission, the secretary of the Department of Wildlife and Fisheries does hereby declare that the 2011 fall inshore shrimp season will close on December 20, 2011 at official sunset except for that portion of Shrimp Management Zone 1 north of the of the southern shore of the Mississippi River Gulf Outlet (MRGO) including the Gulf Intracoastal Waterway (ICWW) north of the Parish Road Bridge, and the open waters of Breton and Chandeleur Sounds as described by the double-rig line in R.S. 56:495.1(A)2. The number of small white shrimp taken in biological samples within these waters to be closed has

increased while water temperatures have decreased and these waters are being closed to protect these shrimp as they over-winter.

Robert J. Barham
Secretary

1201#002

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2012-2013 Commercial King Mackerel Season

In accordance with the provisions of R.S. 49:953 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to employ emergency procedures to establish seasonal rules to set finfish seasons, R.S. 56:6(25)(a) and 56:326.3 which provide that the Wildlife and Fisheries Commission may set seasons for saltwater finfish; the Wildlife and Fisheries Commission hereby sets the following season for the commercial harvest of king mackerel in Louisiana state waters:

The commercial season for king mackerel in Louisiana state waters will open at 12:01 a.m., July 1, 2012 and remain open until the allotted portion of the commercial king mackerel quota for the western Gulf of Mexico has been harvested or projected to be harvested.

The commission grants authority to the secretary of the Department of Wildlife and Fisheries to close the commercial king mackerel season in Louisiana state waters when he is informed by the National Marine Fisheries Service (NMFS) that the commercial king mackerel quota for the western Gulf of Mexico has been harvested or is projected to be harvested, such closure order shall close the season until 12:01 a.m., July 1, 2013, which is the date expected to be set for the re-opening of the 2013-14 commercial king mackerel season in federal waters.

The commission also authorizes the secretary to open additional commercial king mackerel seasons in Louisiana state waters if he is informed that NMFS has opened such additional seasons and to close such seasons when he is informed that the commercial king mackerel quota for the western Gulf of Mexico has been filled, or is projected to be filled, or as needed to effectively implement the provisions herein upon notification to the chairman of the Wildlife and Fisheries Commission.

Effective with seasonal closures under this rule, no person shall commercially harvest, possess, purchase, exchange, barter, trade, sell, or attempt to purchase, exchange, barter, trade, or sell king mackerel, whether taken from within or without Louisiana territorial waters. Also effective with this closure, no person shall possess king mackerel in excess of a daily bag limit, which may only be in possession during the open recreational season by legally licensed recreational fishermen. Nothing shall prohibit the possession or sale of fish by a commercial dealer if legally taken prior to the closure providing that all commercial dealers possessing such fish taken legally prior to the closure shall maintain

appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

Stephen W. Sagrera
Chairman

1201#087

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2012-2013 Recreational Reef Fish Seasons

The reef fish fishery in the Gulf of Mexico is cooperatively managed by the Louisiana Department of Wildlife and Fisheries (LDWF), the Wildlife and Fisheries Commission (LWFC) and the National Marine Fisheries Service (NMFS) with advice from the Gulf of Mexico Fishery Management Council (Gulf Council). Regulations promulgated by NMFS are applicable in waters of the Exclusive Economic Zone (EEZ) of the U.S., which in Louisiana is generally three miles offshore. NMFS typically requests consistent regulations in order to enhance the effectiveness and enforceability of regulations for EEZ waters.

Recreational season rules have been established for red snapper and greater amberjack in the Gulf of Mexico and in Louisiana state waters and both fisheries operate under recreational quotas. If the quota is projected to be reached, NMFS is required by law to close the season to restrain fishing within the established quota for the species. In conjunction with a recreational quota, a closed season has been established in the federal waters of the Gulf of Mexico for greater amberjack from June 1 through July 31 of each year.

Adoption of compatible regulations for Louisiana state waters where feasible enhances effectiveness and enforceability of the regulations already in place for reef fishes harvested in the EEZ off of Louisiana. Unforeseen circumstances may occur which may lead to modification of the recreational seasons to restrain the fisheries within the recreational quota or to allow additional harvest, requiring a modification in established regulations.

In accordance with the emergency provisions of R.S. 49:953 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to employ emergency procedures to promulgate seasonal rules to set finfish seasons, R.S. 56:6(25)(a) and R.S. 56:326.3 which provide that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, the Wildlife and Fisheries Commission hereby declares:

The secretary of the Department of Wildlife and Fisheries is hereby authorized to close the season for the recreational harvest of red snapper or greater amberjack in Louisiana state waters if he is informed by the regional administrator of NMFS that the applicable recreational quota has been harvested or is projected to be harvested in the Gulf of Mexico and the recreational season closed in federal waters of the Gulf of Mexico, and if he is requested by the regional

administrator of NMFS that the state of Louisiana enact compatible regulations in Louisiana state waters.

The commission further declares that the recreational season for the harvest of greater amberjack shall be closed from June 1, 2012 through July 31, 2012.

The commission also hereby grants authority to the secretary of the Department of Wildlife and Fisheries to modify the recreational season currently established in Louisiana state waters if he is informed by NMFS that the season dates for the recreational harvest of red snapper or greater amberjack in the federal waters of the Gulf of Mexico as set out herein have been modified, and that NMFS requests that the season be modified in Louisiana state waters, or as needed to effectively implement the provisions herein upon notification to the chairman of the Wildlife and Fisheries Commission. Such authority shall extend through January 31, 2013.

Stephen W. Sagrera
Chairman

1201#024

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2012-2013 Reef Fish Commercial Seasons

In accordance with the emergency provisions of R.S. 49:953, which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, R.S. 56:6(25)(a) and R.S. 56:326.3 which provide that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, the Wildlife and Fisheries Commission hereby declares:

The commercial fishing seasons for reef fish as listed in LAC 76:VII.335, Reef Fish—Harvest Regulations continue to remain open as of January 1 of each year unless otherwise provided for in LAC 76:VII.335 and LAC 76:VII.337, or as a result of actions by the secretary as authorized below. These commercial fishing seasons include closed seasons for some species and species groups as listed in LAC 76:VII.335 and in LAC 76:VII.337, including prohibition on harvest of goliath and Nassau groupers.

The secretary of the Department of Wildlife and Fisheries is hereby authorized to close the season for the commercial harvest of any species or group of species of the fishes listed in LAC 76:VII.335, Reef Fish—Harvest Regulations, in Louisiana state waters if he is informed by the regional administrator of NMFS that the applicable commercial quota has been harvested in the Gulf of Mexico, and if he is requested by the regional administrator of NMFS that the state of Louisiana enact compatible regulations in Louisiana state waters.

The commission also hereby grants authority to the Secretary of the Department of Wildlife and Fisheries to modify the commercial seasons described here in Louisiana state waters if he is informed by NMFS that the season dates for the commercial harvest of these fish species in the federal waters of the Gulf of Mexico as set out herein have been modified, and that NMFS requests that the season be

modified in Louisiana state waters, or as needed to effectively implement the provisions herein upon notification to the chairman of the Wildlife and Fisheries Commission. Such authority shall extend through January 31, 2013.

Effective with seasonal closures under this Emergency Rule, no person shall commercially harvest, possess, purchase, exchange, barter, trade, sell, or attempt to purchase, exchange, barter, trade, or sell the affected species of fish, whether taken from within or without Louisiana territorial waters. Also effective with these closures, no person shall possess the affected species of fish in excess of a daily bag limit, which may only be in possession during the open recreational season by legally licensed recreational fishermen. Nothing shall prohibit the possession or sale of fish by a commercial dealer if legally taken prior to the closure providing that all commercial dealers possessing such fish taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

Stephen W. Sagrera
Chairman

1201#025

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Emergency Oyster Season Closure—Sister Lake and Bay Junop Public Oyster Seed Reservations

In accordance with the emergency provisions of Louisiana Revised Statutes (R.S.) 49:953, under the authority of R.S. 56:433, and under the authority of a Declaration of Emergency passed by the Wildlife and Fisheries Commission on September 1, 2011 which authorized the secretary of the Department of Wildlife and Fisheries to take emergency action if oyster resources and/or reefs are being adversely impacted or if enforcement problems are encountered, notice is hereby given that the secretary of Wildlife and Fisheries hereby declares that the Sister Lake and Bay Junop Public Oyster Seed Reservations shall close to all oyster harvest at one-half hour after sunset on Thursday, December 15, 2011.

Recent biological sampling in these areas has shown the presence of a successful oyster spat set. Additionally, harvest pressure during the season has significantly reduced an already small oyster stock size and continued commercial harvest may threaten the long-term sustainability of remaining oyster resources in these areas. Protection of the newly-settled young oysters and remaining oyster reef resources from injury is in the best interest of the public oyster areas.

All other 2011/2012 oyster season details as outlined by previous actions of the Wildlife and Fisheries Commission and the Louisiana Department of Wildlife and Fisheries, including the season and daily sack limits in Calcasieu Lake, shall remain in effect at this time.

Notice of any opening, delaying, or closing of a season will be provided by public notice at least 72 hours prior to such action, unless such closure is ordered by the Louisiana

Department of Health and Hospitals for public health concerns.

Robert J. Barham
Secretary

1201#001

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Gag Grouper Recreational Season Closure

The reef fish fishery in the Gulf of Mexico is cooperatively managed by the Louisiana Department of Wildlife and Fisheries (LDWF), the Wildlife and Fisheries Commission (LWFC) and the National Marine Fisheries Service (NMFS) with advice from the Gulf of Mexico Fishery Management Council (Gulf Council). Regulations promulgated by NMFS are applicable in waters of the Exclusive Economic Zone (EEZ) of the U.S., which in Louisiana is generally three miles offshore. An interim rule and a final temporary rule were established by NMFS closing the recreational gag grouper season during much of 2011, allowing for a recreational season from September 16, 2011 through November 15, 2011, in order to reduce overfishing on gag grouper. The NMFS temporary rule was effective until November 30, 2011 and has subsequently been extended to June 2, 2012. The NMFS temporary rule is expected to remain in place while a proposed Rule, published November 2, 2011, containing a rebuilding plan for gag grouper through Amendment 32 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico is in a public comment period. NMFS and the Gulf Council have requested consistent regulations in order to enhance the effectiveness and enforceability of regulations for EEZ waters.

In order to enact regulations in a timely manner so as to have compatible regulations in place in Louisiana waters to coincide with the regulation set forth by NMFS, it is necessary that emergency rules be enacted.

The recreational season for the harvest of gag grouper in Louisiana state waters has previously been closed at 11:59 p.m. November 15, 2011 and remains closed until further notice.

In accordance with the emergency provisions of R.S. 49:953 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, R.S. 56:6(25)(a) and R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, the Wildlife and Fisheries Commission hereby declares:

The recreational fishery for the harvest of gag grouper, previously closed at 11:59 p.m. on November 15, 2011, will remain closed in Louisiana waters, and shall remain closed until further notice. Effective with this closure, no person shall recreationally harvest or possess gag grouper whether within or without Louisiana waters.

The commission also hereby grants authority to the secretary of the Department of Wildlife and Fisheries to open the recreational season when notified by NOAA

Fisheries that the recreational season for the harvest of gag grouper will open in the Federal waters of the Gulf of Mexico, or as needed to effectively implement the provisions herein upon notification to the chairman of the Wildlife and Fisheries Commission. Such authority shall extend through January 31, 2013.

Stephen W. Segrera
Chairman

1201#026

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Recreational and Commercial Fisheries Closure

In accordance with the emergency provisions of R.S. 49:953 of the Administrative Procedure Act, and under the authority of R.S. 56:6.1, the Wildlife and Fisheries Commission hereby closes all commercial fishing, effective immediately January 5, 2012 in the following areas:

Those waters north of 28 degrees 56 minutes 30 seconds north latitude and south of 28 degrees 59 minutes 30 seconds north latitude from the eastern shore of Southwest Pass of the Mississippi River eastward to a line beginning at 28 degrees 59 minutes 30 seconds north latitude and 89 degrees 19 minutes 50 seconds west longitude and ending at 28 degrees 56 minutes 30 seconds north latitude and 89 degrees 23 minutes 00 seconds west longitude, and those waters north of 29 degrees 02 minutes 00 seconds north latitude and south of 29 degrees 02 minutes 20 seconds north latitude from the western shore of South Pass of the Mississippi River westward to 89 degrees 15 minutes 25 seconds west longitude, and those waters north of 28 degrees 59 minutes 40 seconds north latitude and south of 29 degrees 02 minutes 00 seconds north latitude from the western shore of South Pass of the Mississippi River westward to 89 degrees 15 minutes 25 seconds west longitude and southeastward along a line beginning at 29 degrees 02 minutes 00 seconds north latitude and 89 degrees 15 minutes 25 seconds west longitude and ending at 28 degrees 59 minutes 40 seconds north latitude and 89 degrees 10 minutes 15 seconds west longitude, and those waters west of the western shore of South Pass of the Mississippi River south of 28 degrees 59 minutes 40 seconds north latitude bounded by the following coordinates: 1) 28 degrees 59 minutes 15 seconds north latitude and 89 degrees 08 minutes 15 seconds west longitude, 2) 28 degrees 58 minutes 20 seconds north latitude and 89 degrees 10 minutes 00 seconds west longitude, 3) 28 degrees 59 minutes 01 seconds north latitude and 89 degrees 11 minutes 00 seconds west longitude, 4) 28 degrees 59 minutes 40 seconds north latitude and 89 degrees 10 minutes 15 seconds west longitude, and those waters east of the eastern shore of South Pass of the Mississippi River and south of 29 degrees 01 minutes 50 seconds north latitude eastward to a line beginning at 29 degrees 01 minutes 50 seconds north latitude and 89 degrees 07 minutes 20 seconds west longitude and ending at 28 degrees 59 minutes 35 seconds north latitude and 89 degrees 08 minutes 00 seconds west longitude, and those waters adjacent to but not including Northeast Pass

and Southeast Pass of the Mississippi River and bounded by the following coordinates: 1) 29 degrees 08 minutes 35 seconds north latitude and 89 degrees 04 minutes 20 seconds west longitude, 2) 29 degrees 08 minutes 15 seconds north latitude and 89 degrees 02 minutes 10 seconds west longitude, 3) 29 degrees 04 minutes 50 seconds north latitude and 89 degrees 04 minutes 10 seconds west longitude, 4) 29 degrees 05 minutes 30 seconds north latitude and 89 degrees 05 minutes 10 seconds west longitude, and those waters south and west of Pass a Loure of the Mississippi River and east of 89 degrees 05 minutes 35 seconds west longitude bounded by the following coordinates: 1) 29 degrees 11 minutes 25 seconds north latitude and 89 degrees 03 minutes 30 seconds west longitude, 2) 29 degrees 11 minutes 00 seconds north latitude and 89 degrees 02 minutes 25 seconds west longitude, 3) 29 degrees 09 minutes 00 seconds north latitude and 89 degrees 05 minutes 35 seconds west longitude, 4) 29 degrees 11 minutes 00 seconds north latitude and 89 degrees 05 minutes 35 seconds west longitude, and those waters south of North Pass of the Mississippi River bounded by the following coordinates: 1) 29 degrees 11 minutes 35 seconds north latitude and 89 degrees 02 minutes 55 seconds west longitude, 2) 29 degrees 12 minutes 35 seconds north latitude and 89 degrees 01 minutes 05 seconds west longitude, 3) 29 degrees 11 minutes 35 seconds north latitude and 89 degrees 01 minutes 10 seconds west longitude, 4) 29 degrees 11 minutes 10 seconds north latitude and 89 degrees 02 minutes 00 seconds west longitude, and those state inside and outside waters adjacent to Grand Terre Island bounded by the following coordinates: 1) 29 degrees 18 minutes 20 seconds north latitude and 89 degrees 54 minutes 50 seconds west longitude, 2) 29 degrees 17 minutes 10 seconds north latitude and 89 degrees 53 minutes 50 seconds west longitude, 3) 29 degrees 15 minutes 40 seconds north latitude and 89 degrees 56 minutes 00 seconds west longitude, 4) 29 degrees 17 minutes 00 seconds north latitude and 89 degrees 57 minutes 20 seconds west longitude, and those state inside waters in the upper Barataria Basin north of 29 degrees 26 minutes 00 seconds north latitude and south of 29 degrees 29 minutes 00 seconds

north latitude from 89 degrees 50 minutes 00 seconds west longitude westward to 89 degrees 57 minutes 00 seconds west longitude.

Recreational fishing is open in all state inside and outside territorial waters, except in the following areas, where only recreational angling and charter boat angling is allowed: those state inside and outside waters adjacent to Grand Terre Island bounded by the following coordinates: 1) 29 degrees 18 minutes 20 seconds north latitude and 89 degrees 54 minutes 50 seconds west longitude, 2) 29 degrees 17 minutes 10 seconds north latitude and 89 degrees 53 minutes 50 seconds west longitude, 3) 29 degrees 15 minutes 40 seconds north latitude and 89 degrees 56 minutes 00 seconds west longitude, 4) 29 degrees 17 minutes 00 seconds north latitude and 89 degrees 57 minutes 20 seconds west longitude, and those state inside waters in the upper Barataria Basin north of 29 degrees 26 minutes 00 seconds north latitude and south of 29 degrees 29 minutes 00 seconds north latitude from 89 degrees 50 minutes 00 seconds west longitude westward to 89 degrees 57 minutes 00 seconds west longitude.

The Deepwater Horizon drilling rig accident has resulted in a significant release of hydrocarbon pollutants into the waters offshore of southeast Louisiana and these pollutants have the potential to impact fish and other aquatic life in portions of these coastal waters. Efforts have been made and are continuing to be made to minimize the potential threats to fish and other aquatic life.

The commission hereby grants authority to the secretary of the Department of Wildlife and Fisheries to open, close, reopen-reclose, broaden or otherwise modify the areas closed and opened to fishing if biological, environmental and technical data indicate the need to do so, or as needed to effectively implement the provisions herein upon notification to the chairman of the Wildlife and Fisheries Commission.

Stephen W. Sagrera
Chairman

1201#027

Rules

RULE

Board of Elementary and Secondary Education

Bulletin 118—Statewide Assessment Standards and Practices

(LAC 28:CXI.312, 315, 317, 701, 1348, 1803, 1808, 1813, 1817, 1821, 2401, 2403, 2405, 2407, 3303, 3305, and 3505)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 118—Statewide Assessment Standards and Practices*: §312. Administrative Error, §315. Emergencies During Testing, §317. Virtual Charter Schools, §701. Overview of Assessment Programs in Louisiana, §1348. Last Cohorts, §1803. Introduction, §1805. EOCT Development and Implementation Plan, §1808. Biology Test Structure, §1813. Performance Standards, §1817. EOCT Achievement Level Descriptors, §1821. First Cohort, §2401. Description, §2403. Introduction, §2405. Format, §2407. Membership, §3303. Special Education Students, §3305. Students with One or More Disabilities According to Section 504, and §3505. Foreign Exchange Students. These revisions will provide new and updated statewide test information and provide easy access to that information. It was necessary to revise the bulletin at this time to incorporate new and edited policy guidelines in the statewide assessment programs Chapter 3, Test Security; Chapter 7, Assessment Program Overview; Chapter 18, End-of-Course Tests (EOCT); Chapter 33, Assessment of Special Populations; and Chapter 35, Assessment of Students in Special Circumstances. A new assessment chapter was added, Chapter 24, Academic Skills Assessment (ASA) along with its new policy language and guidelines. New policy language, updates and edits were made to Chapters 3, 7, 13, 18, 33, and 35. New policy language additions were made to Chapters 18 and 24.

Title 28

EDUCATION

Part CXI. Bulletin 118—Statewide Assessment Standards and Practices

Chapter 3. Test Security

§312. Administrative Error

A. Administrative errors that result in questions regarding the security of the test or the accuracy of the test data are considered testing irregularities. If it is deemed necessary to void the test, the district test coordinator must fax a completed void form to the LDE, Division of Assessments and Accountability, as directed in the *District and School Test Coordinators Manual*. The original void verification form, along with a copy of the account of the incident, must also be mailed to the LDE, Division of Assessments and Accountability, as directed in the manual.

B. - G3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 32:390 (March 2006), amended LR 33:257 (February 2007), LR

34:66 (January 2008), LR 34:1351 (July 2008), LR 35:218 (February 2009), LR 36:967 (May 2010), LR 38:33 (January 2012).

§315. Emergencies during Testing

A. - A.7. ...

B. End-of-Course (EOC) Tests Emergency Plan

1. Each district shall develop and adopt an emergency plan that includes the steps to be followed in the event of an emergency that results in disruption of online testing.

2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1532 (July 2005), amended LR 32:234 (February 2006), LR 33:258 (February 2007), LR 34:66 (January 2008), LR 35:218 (February 2009), LR 38:33 (January 2012).

§317. Virtual Charter Schools

A. Virtual charter schools shall be responsible for testing their own students.

1. Virtual charter schools shall test their students with staff of the virtual school. Virtual charter schools shall administer all state assessments and are subject to the Louisiana School and District Accountability System. Virtual charter schools shall conduct all state assessments at secure, proctored locations within reasonable distance of students' homes, as approved by the charter authorizer.

2. Parents and/or family members of the students of the virtual school shall not test their own children and/or family members. The local school district shall not test any students enrolled in virtual charter schools unless there is a written agreement between the local school district and the virtual charter school. No local school district shall ever be required to test students attending the virtual school.

3. The district will develop and submit to LDOE annually a test security policy approved by its board.

4. The virtual charter school's assessment plan shall be part of its board approved test security policy. The plan must identify:

a. the state assessments to be administered throughout the year;

b. the cities/towns where testing will occur;

c. description of testing locations;

d. qualifications of testing personnel;

e. procedures for implementation of the requirement of a photo ID of all students to ensure the students reporting for testing are the actual students assigned to that testing site; and

f. provisions for students' transportation to the testing locations.

5. LDOE will monitor the assessment plan.

6. If the student population of the virtual school is spread across multiple parishes, the virtual school shall secure testing centers in those parishes (e.g., public library meeting rooms; public meeting facility; private meeting facility; rooms at community colleges, technical colleges, colleges). Testing centers shall be physical locations and must be submitted to LDOE prior to testing. A plan for

providing student transportation to the assessment location on an as needed basis.

7. Thirty days prior to testing, the virtual charter school shall provide LDOE a list of students with testing accommodations as specified in the IEP for students with disabilities according to IDEA, IAPs for students with disabilities according to section 504, and accommodation plans for limited English proficient (LEP) students.

8. Within 30 days of testing, the virtual charter schools shall provide LDOE documentation of training in test administration and test security for each test administration. A copy of the following must be included:

- a. the agenda;
- b. all training materials; and
- c. all sign-in-sheets.

9. Within 30 days of testing, the virtual charter school shall provide LDOE documentation of the test administration including the:

- a. testing locations;
- b. schedule;
- c. all sign-in sheets for the students assessed with the name of the assessment administered;
- d. days and times the student was assessed; and
- e. provided accommodations.

10. LDOE staff shall have the authority to:

- a. monitor the implementation of the testing plan;
- b. require changes to the testing plan as deemed necessary.

11. LDOE staff shall:

- a. notify virtual charter schools of any new requirements to their testing plan;
- b. annually evaluate the testing plan to ensure full compliance with policies and procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 38:33 (January 2012).

Chapter 7. Assessment Program Overview

§701. Overview of Assessment Programs in Louisiana

A. ...

Name of Assessment Program	Assessment Population	Administered
Kindergarten Screening		
Kindergarten Developmental Readiness Screening Program (KDRSP)	Kindergarten	fall 1987–
Norm-Referenced Tests (NRTs)		
California Achievement Test (CAT/F)	grades 4, 6, and 9	spring 1988–spring 1992 (no longer administered)
California Achievement Test (CAT/5)	grades 4 and 6 grade 8	spring 1993–spring 1997 spring 1997 only (no longer administered)
Iowa Tests of Basic Skills (ITBS) (form L) and Iowa Tests of Educational Development (ITED) (form M)	grades 4, 6, 8, 9, 10, and 11	spring 1998 (no longer administered)

Name of Assessment Program	Assessment Population	Administered
ITBS ITED (form M)	grades 3, 5, 6, and 7 grade 9	spring 1999–spring 2002 (no longer administered)
ITBS ITED (form B)	grades 3, 5, 6, and 7 grade 9	spring 2003–spring 2005 (no longer administered)
Criterion-Referenced Tests (CRTs)		
National Assessment of Educational Progress (NAEP)	grades 4, 8, and 12	spring 1990–
Louisiana Educational Assessment Program (LEAP)	grades 3, 5, and 7	spring 1989–spring 1998 (no longer administered)
Graduation Exit Examination (“old” GEE)	grades 10 and 11	spring 1989–spring 2003 (state administered) fall 2003– (district administered)
Louisiana Educational Assessment Program (LEAP) (ELA and Mathematics)	grades 4 and 8	spring 1999–
LEAP (Science and Social Studies)	grades 4 and 8	spring 2000–
Graduation Exit Examination (GEE) (ELA and Mathematics)	grade 10	spring 2001–
GEE (Science and Social Studies)	grade 11	spring 2002–
End-Of-Course Tests	Algebra I	fall 2007–
EOCT	English II	fall 2008–
EOCT	Geometry	fall 2009–
EOCT	Biology	fall 2010–
EOCT	Applied Algebra I form	spring 2011–
EOCT	English III	fall 2011–
Integrated NRT/CRT		
Integrated Louisiana Educational Assessment Program (iLEAP)	Integrated Louisiana Educational Assessment Program (iLEAP)	Integrated Louisiana Educational Assessment Program (iLEAP)
iLEAP	Grade 9	Spring 2010 (last administration of grade 9 iLEAP)
Special Population Assessments		
Louisiana Alternate Assessment, Level 1 (LAA 1)	Students with Individualized Education Programs (IEPs) who meet participation criteria in grades 3–11	spring 2000–2007
LAA 1	ELA and Mathematics (grade spans 3–4; 5–6; 7–8; 9–10); Science (grades 4, 8, and 11)	Revised spring 2008–

Name of Assessment Program	Assessment Population	Administered
LAA 1 ELA and Mathematics	Grade 9	Spring 2010 (last administration of grade 9 LAA 1)
Louisiana Alternate Assessment, Level 2 (LAA 2) ELA and Mathematics (Grades 4, 8, and 10) Science and Social Studies (Grade 11)	grades 4, 8, 10, and 11	spring 2006–
LAA 2 ELA and Mathematics	grades 5, 6, 7, and 9	spring 2007–
LAA 2 ELA and Mathematics	Grade 9	Spring 2010 (last administration of grade 9 LAA 2)
LAA 2 Science and Social Studies	grades 4 and 8	spring 2008–
Louisiana Alternate Assessment-B (LAA-B) ["out-of-level" test]	Students with Individualized Education Programs (IEPs) who met eligibility criteria in grades 3–11.	spring 1999–spring 2003 (no longer administered)
English Language Development Assessment (ELDA)	Limited English Proficient (LEP) students in grades K–12	spring 2005–
Academic Skills Assessment (ASA) and ASA LAA 2 form	Students pursuing a State-Approved Skills Certificate (SASC) or GED	spring 2012–

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, Office of Student and School Performance, LR 25:2169 (November 1999), amended LR 38:34 (January 2012).

Chapter 13. Graduation Exit Examination

Subchapter D. GEE Assessment Structure

§1348. Last Cohorts

A. First-time freshmen in 2009–2010 comprise the last cohort of GEE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 38:35 (January 2012).

Chapter 18. End-of-Course Tests

Subchapter B. General Provisions

§1803. Introduction

A. - B. ...

1. algebra I/ applied algebra 1 form;
2. - 5. ...
6. U.S. history.

C. - E. ...

F. Since these tests are being developed for use in Louisiana schools, any school selected for field tests shall participate in the field tests. In spring, 2012, the U. S. history field tests will be administered.

G. - G.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 35:214 (February 2009), amended LR 36:477 (March 2010), LR 38:35 (January 2012).

§1805. EOCT Development and Implementation Plan

Course	Test Administration	Year 1 2008– 2009	Year 2 2009– 2010	Year 3 2010– 2011	Year 4 2011– 2012	Year 5 2012– 2013
Algebra I	Field Test					
	Operational Test	√	√	√	√	√
English II	Field Test					
	Operational Test	√	√	√	√	√
Geometry	Field Test	√				
	Operational Test		√	√	√	√
Biology	Field Test		√			
	Operational Test			√	√	√
English III	Field Test			√		
	Operational Test				√	√
U.S. History	Field Test				√	
	Operational Test					√

NOTE: The field test in the table is the stand-alone field test for the initial item development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 35:215 (February 2009), amended LR 38:35 (January 2012).

Subchapter C. EOCT Test Design

§1808. Biology Test Structure

A. The biology EOC tests include three sessions, all of which will be administered online:

1. 25—item multiple-choice session in which students may not use calculators;
2. 3—item constructed-response session, in which students may use calculators; and
3. 25—item multiple-choice session in which students may use calculators.

B. Student responses to multiple-choice items will be computer-scored.

C. Student responses to the constructed-response items will be scored by the contractor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 38:35 (January 2012).

Subchapter D. Achievement Levels and Performance Standards

§1813. Performance Standards

A. Performance standards for EOCT Algebra I, English II, Geometry, and Biology tests are finalized in scaled-score form.

B. - B.2. ...

3. Geometry Scaled-Score Ranges

Geometry	
Achievement Level	Scaled-Score Ranges
Excellent	731-800
Good	700-730

Geometry	
Achievement Level	Scaled-Score Ranges
Fair	665-699
Needs Improvement	600-664

4. Biology Scaled-Score Ranges

Biology	
Achievement Level	Scaled-Score Ranges
Excellent	740-800
Good	700-739
Fair	661-699
Needs Improvement	600-660

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 35:215 (February 2009), amended LR 36:478 (March 2010), LR 38:35 (January 2012).

Subchapter E. Achievement Level Descriptors §1817. EOCT Achievement Level Descriptors

A. - C. ...

D. Biology Achievement Level Descriptors

Excellent
<p>Students at this achievement level generally have exhibited the ability to:</p> <ol style="list-style-type: none"> design an appropriate experiment that includes a hypothesis, variables, and controls; analyze the role of the Sun in living systems and various biological processes; analyze biogeochemical cycles and how components relate to a specific ecosystem; analyze the components and energy flow in food webs and ecosystems, and predict how populations will be impacted by changes; differentiate between prokaryotic and eukaryotic cells using structural and functional differences among organelles; compare active and passive transport; analyze balanced equations of photosynthesis and cellular respiration; create and use a Punnett square to calculate the probabilities of the genotypes and phenotypes of offspring; and evaluate and describe the impact of emerging technologies on society.
Good
<p>Students at this achievement level generally have exhibited the ability to:</p> <ol style="list-style-type: none"> determine the validity of a conclusion by analyzing experimental data; identify and describe the components of the biogeochemical cycles; use radioactive elements to determine the age of earth materials; calculate the energy transfer between trophic levels of an energy pyramid; analyze and compare the movement of molecules across a cell membrane; explain and evaluate the roles and uses of ATP in a cell; explain and compare the stages of an organism's development, including mitosis and meiosis; compare the structure, function, and interrelationships of organ systems and their components among various organisms and within humans; compare the structures, functions, and cycles of viruses to those of cells; determine the relationship between vaccination and immunity; and evaluate various methods of disease transmission and prevention.

Fair
<p>Students at this achievement level generally have exhibited the ability to:</p> <ol style="list-style-type: none"> identify appropriate lab safety measures and equipment; interpret data and/or a graph to draw appropriate conclusions; describe how organisms respond to different stimuli; determine and compare ages of rock layers, with and without fossils; apply various evolutionary models and the fossil record to explain relationships between organisms; explain how specific behaviors contribute to various species' survival; describe the role of enzymes in living systems; recognize the basic structure and components of a nucleic acid; describe the relationship between DNA, genes, chromosomes, and proteins; identify and compare organisms using a dichotomous key; and analyze and describe how organisms maintain homeostasis.
Needs Improvement
<p>Students at this achievement level are generally working toward the ability to:</p> <ol style="list-style-type: none"> identify appropriate lab safety measures and equipment; interpret data and/or a graph to draw appropriate conclusions; describe how organisms respond to different stimuli; explain how specific behaviors contribute to various species' survival; and describe the relationship between DNA, genes, chromosomes, and proteins.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 35:216 (February 2009), amended LR 36:478 (March 2010), LR 37:820 (March 2011), repromulgated LR 37:1123 (April 2011), LR 38:36 (January 2012).

§1821. First Cohort

A. The first cohort comprises students who were first-time ninth graders in 2010–2011 and all first-time ninth graders thereafter. First cohort students are required to score Fair or above on EOC English II or English III, Algebra I or Geometry, and Biology or U.S. history to be eligible for a standard high school diploma.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 36:977 (May 2010), amended LR 38:36 (January 2012).

Chapter 24. Academic Skills Assessment (ASA)

Subchapter A. Background

§2401. Description

A. A statewide assessment program developed for students pursuing a state-approved skills certificate (SASC) or GED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 38:36 (January 2012).

Subchapter B. General Provisions

§2403. Introduction

A. ASA will be administered to students pursuing a state-approved skills certificate (SASC) or GED.

B. ASA or ASA LAA 2 will be administered to students with disabilities identified under IDEA who meet LAA 2 participation criteria.

C. ASA or ASA LAA 2 will be administered in the first and second year of program (SASC or GED):

1. in year one, the students will take ASA Mathematics; and

2. in year two, the students will take ASA English language arts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 38:36 (January 2012).

Subchapter C. ASA Test Design

§2405. Format

A. English language arts.

B. Mathematics.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 38:37 (January 2012).

Subchapter D. Target Population

§2407. Membership

A. Students pursuing a state-approved skills certificate (SASC or GED).

B. Remaining students presently enrolled in the Options (PreGED/Skills) Program for 2011-2012 only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 38:37 (January 2012).

Chapter 33. Assessment of Special Populations

§3303. Special Education Students

A. - A.1. ...

2. New accommodations or changes to an accommodation for a statewide assessment must be on a student's IEP form 30 days prior to the start of testing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1945.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1560 (July 2005), amended LR 32:239 (February 2006), LR 36:983 (May 2010), LR 38:37 (January 2012).

§3305. Students with One or More Disabilities

According to Section 504

A. - B.3. ...

4. New accommodations or changes to an accommodation for a statewide assessment must be on the student IAP form 30 days prior to the start of testing.

5. Documentation for how the student meets the definition of substantially limited in Section 1630.2 of the Americans with Disabilities Act (ADA) of 1990 must be on file at the school.

C. - I.3.f. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7, R.S. 17:24 et seq., R.S. 17:391-400, R.S. 17:1941 et seq., R.S. 17:397, R.S. 17:1946, and R.S. 17:1947.1.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1560 (July 2005), amended LR 32:239 (February 2006), LR 33:262 (February 2007), LR 38:37 (January 2012).

Chapter 35. Assessment of Students in Special Circumstances

§3505. Foreign Exchange Students

A. Foreign exchange students shall take the appropriate assessment for their enrolled grade during the scheduled assessment period.

B. If foreign exchange students are screened and determined to be limited English proficient, they may qualify for test accommodations provided they are used in the student's regular classroom instruction and assessment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:151.3 and R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1563 (July 2005), amended LR 34:2557 (December 2008), repromulgated LR 35:62 (January 2009), LR 38:37 (January 2012).

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RULE

Board of Elementary and Secondary Education

Bulletin 126—Charter Schools—Virtual Schools
(LAC 28:CXXXIX.103, 515, 3701, 3703, 3705 and 3707)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 126—Charter Schools: §103. Definitions, §515. Application Components, and Chapter 37. Virtual Charter Schools*. The rules define virtual charter schools as a specific kind of charter school and articulate specific requirements for the schools, including requirements around virtual charter applications, state testing, the provision of technical access to students enrolled at the schools, and the funding of the virtual schools. The policy requires that students who are considered at risk or can demonstrate need be provided with the technical access (laptops, internet connectivity) that will enable them to participate in the virtual environment. The policy also lays out specific questions that must be answered by those seeking to operate virtual schools in Louisiana as part of their charter request for applications. The charter policy also requires that virtual charters provide a testing plan that meets requirements set forth by the department to ensure a safe and secure testing environment for students enrolled in the schools.

Title 28

EDUCATION

Part CXXXIX. Bulletin 126—Charter Schools

Chapter 1. General Provisions

§103. Definitions

A. - A.2. ...

B. *Appropriate Technical Infrastructure*—any servers, programs, Internet access, and/or management systems that allow user interaction, provide sufficient bandwidth to host courses or online services, and sustain peak periods of usage without a reduction in performance.

C. *At-Risk Pupil*—any pupil about whom at least one of the following is true:

1. is eligible to participate in the federal free or reduced lunch program by demonstrating that he meets the

income requirements established for participation in the program, not necessarily by participating in the program;

2. is under the age of 20 and has been withdrawn from school prior to graduation for not less than one semester;

3. is under the age of 20 and has failed to achieve the required score on any portion of the examination required for high school graduation;

4. is in the eighth grade or below and is reading two or more grade levels below grade level as determined by one or more of the tests required pursuant to R.S. 17:24.4;

5. has been identified as an exceptional child as defined in R.S. 17:1943 not including gifted and talented; or

6. is the mother or father of a child.

D. *BESE and/or Board*—the State Board of Elementary and Secondary Education as created by the Louisiana Constitution and the Louisiana Revised Statutes.

E. *Charter*—the agreement and authorization to operate a charter school, which includes the charter contracts and exhibits, which incorporate the charter school application.

F. *Charter Operator*—the nonprofit corporation or school board authorized to operate a charter school.

G. *Management Organization*—an organization contracted by the charter operator to directly manage a charter school.

H. *Charter School*—an independent public school that provides a program of elementary and/or secondary education established pursuant to and in accordance with the provisions of the Louisiana Charter School Law to provide a learning environment that will improve pupil achievement.

I. *Charter School Application*—the proposal submitted to BESE, which includes but is not limited to, responses to questions concerning a charter school's education program; governance, leadership, and management; financial plan; and facilities.

J. *Charter School Law*—Louisiana Laws, R.S. 17:3971 et seq., governing the operation of a charter school.

K. *Chartering Authority*—a local school board or the State Board of Elementary and Secondary Education.

L. *Core Subject*—core subject shall include those subjects defined as core subjects in Bulletin 741.

M. *Department of Education or LDE*—the Louisiana Department of Education.

N. *Department of Education Office of Parental Options or OPO*—the unit within the Department of Education responsible for the administration of the state charter school program and for providing oversight of the operation of charter schools chartered by BESE.

O. *Hearing Officer*—the individual assigned by BESE to perform adjudicatory functions at charter school revocation hearings.

P. *Instructional Coach*—a parent or guardian, extended adult family member, or other adult designated by the parent or guardian who works in person with each virtual charter school student under the guidance of the Louisiana-licensed professional teacher.

Q. *Instructional and Communication Hardware*—any equipment used to ensure students can access and engage with the educational program (e.g., headphones, wireless air cards, learning management systems, web-based communication tools).

R. *Local School Board*—any city, parish, or other local education agency.

S. *Public Service Organization*—any community-based group of 50 or more persons incorporated under the laws of this state that meets all of the following requirements:

1. has a charitable, eleemosynary, or philanthropic purpose; and is qualified as a tax-exempt organization under Section 501(c) of the United States Internal Revenue Code and is organized for a public purpose.

T. *State Superintendent*—the Superintendent of Education, who is the chief administrative officer of the Louisiana Department of Education, and who shall administer, coordinate, and supervise the activities of the department in accordance with law, regulation, and policy.

U. *Technical Access*—computer and internet availability sufficient to ensure access for all students.

V. *Virtual School*—an educational program operated for a minimum of one academic year and covering specified educational learning objectives for the purpose of obtaining a Louisiana certified diploma, the delivery of such a program being through an electronic medium such that the students are not required to be at a specific location in order to receive instruction from a teacher, but instead access instruction remotely through computers and other technology, which may separate the student and teacher by time and space. This does not preclude the ability of said program to host face-to-face meetings, including field trips, extracurricular activities, conferences between the student, parents, and teachers, or any such related events.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3973.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:1357 (July 2008), amended LR 37:867 (March 2011), LR 37:2383 (August 2011), amended LR 38:37 (January 2012).

Chapter 5. Charter School Application and Approval Process

§515. Application Components

A. - G. ...

H. In the case of a proposed virtual charter school, the request for applications shall additionally require the applicants to provide:

1. a testing plan that meets the requirements set forth in Section 317 of Bulletin 118;

2. a plan for delivering instruction in the event of technical and other course delivery problems which prevent normal course delivery;

3. a summary of data protection and recovery procedures in the event of catastrophic system failure;

4. a staff/teacher acceptable use policy for technology that complies with R.S. 17:3996(21);

5. a school electronic communication policy that complies with the federal Child Internet Protection Act and R.S. 17:100.7, including information on school Internet safety and filtering practices and policies;

6. a plan for providing professional development appropriate to the delivery method used and the acceptable use and electronic communication policies;

7. a plan for providing adequate, timely, and appropriate technical support to students, teachers, facilitators, and instructional coaches;

8. a plan for providing orientations to enrolled students, their parents, and their instructional coaches on the course delivery model prior to the beginning of the class;

9. a plan outlining the nature, frequency, and location of all required and optional in-person meetings and interactions between parents and school faculty, including but not limited to parent/teacher conferences, open houses, and school community meetings;

10. a plan for verifying student participation and performance, including specific intervention procedures the school will take when students are not participating as required; and

11. a plan for complying with Title 28, Chapter 11, §1119 Health Screening as part of enrollment and the ongoing functioning of the school.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1362 (July 2008), amended LR 37:869 (March 2011), LR 37:2383 (August 2011), LR 38:38(January 2012).

Chapter 37. Virtual Charter Schools

§3701. Application of this Bulletin

A. All rules, requirements, and regulations established in this *Bulletin 126—Charter Schools* shall apply to the authorization and operation of any virtual charter school, except as specifically set forth in *Bulletin 741—Louisiana Handbook for School Administrators*, Section 907, Secondary—Class Times and Carnegie Credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:39 (January 2012).

§3703. Curriculum in Virtual Charter School

A. The virtual charter school shall ensure that all course content is being used under an appropriate and valid license and shall defend, indemnify and hold harmless BESE, LDE and the students and parents for any claims of non-compliance.

B. The virtual charter school shall make courses available to all students by complying with web accessibility guidelines and standards (W3C, section 508, and Louisiana and institutional guidelines) to the maximum extent reasonably possible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:39 (January 2012).

§3705. Technical Requirements for Virtual Charter Schools

A. The following technical specifications are required for all virtual charter schools:

1. enrolled students will have access to appropriate technical access;

2. provide each student enrolled in the program with all the necessary instructional materials;

3. provide each full-time student enrolled in the program who qualifies for free or reduced-price school lunches under the National School Lunch Act, is considered at-risk for the purpose of calculating funding through the Minimum Foundation Program, or does not have a computer or internet access in his or her home with:

a. all equipment necessary for participants in the virtual instruction program, including, but not limited to, a

computer, computer monitor, and printer, if a printer is necessary to participate in the program; and

b. access to or reimbursement for all Internet services necessary for online delivery of instruction;

4. the virtual charter school will have the appropriate license to allow student/teacher usage of the proprietary technology through a license agreement with the owner of the technology;

5. timely and appropriate technical support, as described in the charter operator's application;

6. course technical requirements will be provided prior to enrollment;

7. the appropriate technical infrastructure to support their course offerings for effective course delivery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:39 (January 2012).

§3707. Virtual Charter School Funding

A. For purposes of funding, each Type 2 virtual charter school shall be funded in accordance with the provisions of §2301 of this bulletin, except that the local portion of the per pupil amount received pursuant to the Minimum Foundation Program formula adopted each year shall be reduced by 10 percent, with such amount being distributed to the city, parish, or other local school system within which the Type 2 virtual charter school is located.

B. Any Type 1, 3, 4 or 5 virtual charter school shall be funded in accordance with the provisions of §2301 of this bulletin with no exceptions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 38:39 (January 2012).

Catherine R. Pozniak
Executive Director

1201#042

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School
Administrators—Educational Leader
(LAC 28: CXV.337 and 507)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for School Administrators*: §337. Written Policies and Procedures and §507. Louisiana Educational Leader Induction (LELI) Program. This revised policy will discontinue the state-administered Louisiana educational leader induction (LELI) program. The state-administered LELI Program will be phased out after the 2010-2011 school year and transitioned to the local school districts after July 1, 2011. The revised policy will require districts to administer and assist newly appointed principals, assistant principals, and district leaders in building administrative, instructional,

and professional knowledge and skills in order to train, support, and retain effective leaders.

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 3. Operation and Administration

§337. Written Policies and Procedures

A. - B. ...

C. Each LEA shall have policies and procedures that address, but are not limited to, the following:

1. - 26. ...

27. provision of a district-administered induction program for all newly appointed principals, assistant principals, and district level leaders with provisional principal or Educational Leader Level 1 certification (refer to §507).

28. - 29. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6; R.S. 17:81; R.S.17:240.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1261 (June 2005), amended LR 33:429 (March 2007), LR 35:1101 (June 2009), LR 36:1224 (June 2010), LR 37:1141 (April 2011), LR 37:1380, 1380 (May 2011), LR 37:2134 (July 2011), LR 38:40 (January 2012).

Chapter 5. Personnel

§507. District Educational Leadership Induction Program

A. All newly appointed principals, assistant principals, and district level leaders with provisional principal or Educational Leader Level 1 certification shall participate in a district-administered educational leadership induction program aligned to state guidelines available on www.teachlouisiana.net. (Prior to July 1, 2011, newly appointed principals, assistant principals, and district level leaders with provisional principal or Educational Leader Level 1 certification were required to participate in the state-approved Louisiana Educational Leader Induction (LELI) program.)

B. The district educational leadership induction program shall include but is not limited to these four core components:

1. professional development;
2. school site visits;
3. mentor-facilitated face to face meetings; and
4. access to district assigned mentors.

C. Completion of a district educational leadership induction program is required for the following:

1. individuals appointed to a principalship, assistant principalship, or district level leadership position;
2. an individual serving as acting principal or acting assistant principal if he/she is serving in a full-time, full-year administrative capacity.

D. A newly appointed assistant principal, principal, and district leader who completes a district Educational Leader Induction Program and three years of successful educational leadership experience may request to have his/her provisional principal status or Educational Leader Level 1 endorsement updated to Educational Leader Level 2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3761.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1266 (June 2005), amended LR 32:1416 (August 2006), LR 38:40 (January 2012).

Catherine R. Pozniak
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1201#043

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Physical Education
(LAC 28: CXV.2357)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for School Administrators*: §2357. Physical Education. These policy revisions require that off-campus training programs must meet required instructional minutes, cover the required content standards, and be supervised by qualified personnel to count for PE credit. These changes will not result in an increase in costs or savings to state or local governmental units. These policy revisions to Section 2357 will ensure that policies regarding content standards and instructional time are being met and that proper supervision is provided for off-campus PE.

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 23. Curriculum and Instruction

§2357. Physical Education

A. - I. ...

J. Off-campus athletic training programs may substitute for Physical Education I and Physical Education II if the following conditions are met:

1. permission of the principal;
2. the student participates in the off-campus athletic training program for an amount of time equal to or greater than the required instructional minutes necessary to obtain credit;
3. the off-campus athletic training programs are aligned to the state physical education content standards and GLEs, as verified by the school principal;
4. a reporting system for attendance and grading is established;
5. the off-campus athletic training program is under the direction of a qualified instructor or coach, as verified by the school principal and submitted to the DOE;
 - a. A qualified instructor or coach is one that has a bachelor's or master's degree in an area related to the activity, has regional or national accreditation or a license in an area related to the activity, or can present evidence of substantial accomplishment in the area (such as awards, newspaper articles, published research in the field, etc.)
6. approval of the local school board;
7. approval by the DOE by submitting documentation verifying the following;

- a. off-campus training program and its alignment with the state standards and GLEs;
- b. record of student’s attendance and participation;
- c. qualifications of the instructor; and
- d. verification that the school principal has reviewed the documentation.

8. a hold harmless agreement signed by the parent or guardian of the student who would be participating in the off-campus athletic program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:17.1; R.S. 17:24.4; R.S. 17:276.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1297 (June 2005), amended LR 33:430 (March 2007), LR 38:40 (January 2012).

Catherine R. Pozniak
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1201#044

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Sexual Offenses Affecting Minors (LAC 28: CXV.337 and 502)

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for School Administrators*: §337. Written Policies and §502. Staff Misconduct. These policy changes require an employee arrested for any of the crimes listed in R.S. 15:587.1, any other sexual offense affecting minors, or any justified complaint of child abuse or neglect to report his/her arrest to the local education agency and a school bus operator arrested for a violation of R.S. 14:98, 98.1 to report his/her arrest to the local education agency. These policy revisions to Sections 337 and 502, are required by Act 533 of the 2010 Regular Legislative Session and Act 267 of the 2011 Regular Legislative Session.

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 3. Operation and Administration

§337. Written Policies and Procedures

A. Each LEA shall have written policies governing all school activities as they relate to students, the instructional program, staff, buildings, services, and the curriculum.

B. Each LEA shall have policies and procedures stated in written form for instructional programs, graduation ceremonies, student activity programs, and student services.

C. Each LEA shall have policies and procedures that address, but are not limited to, the following:

1. - 27. ...

28. an employee arrested for any of the crimes listed in R.S. 15:587.1, any other sexual offense affecting minors, or any justified complaint of child abuse or neglect.

29. the reporting of school bus operator arrests for violations of R.S. 14:98, 98.1, or any other law or ordinance that prohibits operating a vehicle while under the influence

of alcohol or any abused substance or controlled dangerous substance set forth in the schedules provided in R.S. 40:964.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6; R.S. 17:7(29); R.S. 17:81; R.S.17:240; R.S. 17:100.8.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1261 (June 2005), amended LR 33:429 (March 2007), LR 35:1101 (June 2009), LR 36:1224 (June 2010), LR 37:1141 (April 2011), LR 37:1380, 1380 (May 2011), LR 37:2134 (July 2011), LR 38:41 (January 2012).

Chapter 5. Personnel

§502. Staff Misconduct

A. - C.6 ...

D. A school employee shall report his or her arrest for a violation of any of the crimes provided in R.S. 15:587.1, any other sexual offense affecting minors, or any justified complaint of child abuse or neglect on file in the central registry pursuant to Article 615 of the Children’s Code within 24 hours of the arrest. However, if the school employee is arrested on a Saturday, Sunday, or a legally declared school holiday such report shall be made prior to the school employee next reporting for his work assignment at a school.

1. School employee means any employee of, an LEA including a teacher, substitute teacher, bus driver, substitute bus driver, or janitor, and shall include all temporary, part-time, and permanent school employees.

2. All school governing bodies shall promulgate reporting policies and/or procedures to be followed by any employee arrested for the aforementioned offenses.

3. The report shall be made by the school employee to a person or persons as specified by the LEA.

4. The report shall be made by the school employee regardless of whether he or she was performing an official duty or responsibility as a school employee at the time of the offense.

5. In addition, the school employee shall report the disposition of any legal proceedings related to any such arrest within twenty four hours, which shall also be made a part of any related files or records.

6. Failure to comply with these provisions shall result in the following:

a. suspension, with or without pay, of said employee by the employee’s LEA if such employee is serving a probationary term of employment or if the provisions of law relative to probation and tenure are not applicable to the employee;

b. removal proceedings under R.S. 17:45, 443, 462, 493, 523, or 533, as applicable, for tenured employees;

i. written and signed charges alleging such failure shall be brought against any such tenured employee.

7. Unless criminal charges are instituted pursuant to an arrest which is required to be reported, all information, records, hearing materials, and final recommendations of the school pertaining to such reported arrest shall remain confidential and shall not be subject to a public records request.

E. A school bus operator shall report his arrest for a violation of R.S. 14:98, 98.1, or any other law or ordinance that prohibits operating a vehicle while under the influence of alcohol or any abused substance or controlled dangerous substance set forth in the schedules provided in R.S. 40:964.

1. School bus operator means any employee of an LEA whose duty it is to transport students in any school bus or activity bus to and from a school approved by BESE or to and from any school-related activity.

2. The report shall be made by the operator to a person or persons as specified by the LEA in rules and regulations.

3. Such report shall be made within twenty four hours of the arrest or prior to the operator next reporting for his work assignment as a school bus operator, whichever time period is shorter.

4. Such report shall be made by the school bus operator regardless of who owns or leases the vehicle being driven by the operator at the time of the offense for which he was arrested and regardless of whether the operator was performing an official duty or responsibility as a school bus operator at the time of the offense.

5. A school bus operator who fails to comply with the provisions of this Section shall be terminated by the LEA employing the operator if such operator is serving a probationary term of employment as provided by R.S. 17:492 or if the provisions of law relative to probation and tenure of bus operators are not applicable to the operator.

6. A school bus operator employed by an LEA who is a regular and permanent employee of the board as provided by R.S. 17:492 shall be subject to removal as provided by R.S. 17:493 for failure to comply with the provisions of this Section.

a. Written and signed charges alleging such failure shall be brought against the bus operator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:15; R.S. 17:81.9; R.S. 17:587.1; R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1265 (June 2005), amended LR 33:431 (March 2007), LR 34:607 (April 2008), repromulgated LR 35:444 (March 2009), amended LR 35:1099 (June 2009), LR 37:1138 (April 2011), LR 38:41 (January 2012).

Catherine R. Pozniak
Executive Director

1201#045

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Educational Leader (LAC 28:CXXXI.240, 703, 705, 707, 721, and 723)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §240. Educational Leader Practitioner (Residency) Program, §703. Introduction, §705. Educational Leader Certificate Level 1, §707. Educational Leader Certificate Level 2, §721. Out-of-State Principal Level 1 (OSP1), and §723. Out-of-State Principal Level 2 (OSP2). This revised policy will discontinue the state-administered Louisiana Educational Leader Induction (LELI) Program. The state-administered LELI Program will be phased out after the 2010-2011 school year and transitioned to the local school districts after July 1, 2011. The revised policy will require districts to administer

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and assist newly appointed principals, assistant principals, and district leaders in building administrative, instructional, and professional knowledge and skills in order to train, support, and retain effective leaders.

Title 28

EDUCATION

Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

Chapter 2. Louisiana Educator Preparation Programs

Subchapter C. Alternate Educational Leader Preparation Programs

§240. Educational Leader Practitioner (Residency) Program

A. State-approved private providers and Louisiana colleges or universities may choose to offer an Educational Leader Practitioner (Residency) Program for purposes of certifying successful candidates for Educational Leader Level 1 certification. (Two additional alternate paths are available to individuals seeking an Educational Leader Certificate Level 1—see Chapter 7, §705 for Path 1 and Path 2.). Educational Leader Practitioner Program providers must submit a program proposal to the Louisiana Department of Education, Division of Certification and Preparation. Programs will be reviewed for adherence to program guidelines, and those meeting guidelines will be recommended to the Board of Elementary and Secondary Education for approval status. The Educational Leader Practitioner Program is a streamlined certification path that combines intensive coursework and practical, on-the-job experience.

1. - 8.f. ...

9. On-Going Support (Second and Third Year). Program providers will give support services to educational leaders who have completed the practitioner leader program and are serving as school leaders during their second and third years in the program. Support services were coordinated with the state-administered Louisiana Education Leaders Induction Program prior to July 1, 2011. The district-administered educational leadership induction program after July 1, 2011 will include regular visits to their schools from a successful, veteran principal who provides feedback and coaching and leads regular cohort meetings.

10. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:818 (May 2007), amended LR 38:42 (January 2012).

Chapter 7. Administrative and Supervisory Credentials

Subchapter A. The Educational Leadership Certification Structure—Effective July 1, 2006

§703. Introduction

A. The Educational Leadership Certification structure, effective July 1, 2006, provides for four levels of leader certification: Teacher Leader; Educational Leader Level 1; Educational Leader Level 2; and Educational Leader Level 3. The Teacher Leader Endorsement is an option for a teacher to be identified as a teacher leader; it is not a state required credential for a specific administrative position. The Educational Leader Level 1 license is an entry-level license

for individuals seeking to qualify for school and/or district leadership positions (e.g., assistant principals, principals, parish or city supervisors of instruction, supervisors of child welfare and attendance, special education supervisors, or comparable school/district leader positions). An individual moves from a Level 1 to a Level 2 license upon completion of the state-administered Educational Leader Induction Program prior to July 1, 2011 or the district-administered educational leadership induction after July 1, 2011 and the required years of experience. The Level 3 license qualifies an individual for employment as a district superintendent.

B. - B.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1822 (October 2006), amended LR 33:819 (May 2007), LR 38:42 (January 2012).

§705. Educational Leader Certificate Level 1

A. - A.5.b. ...

6. Upon employment as a school/district educational leader, an individual with an Educational Leader Level 1 endorsement must have enrolled in the state-approved Educational Leader Induction Program under the direction of the Louisiana Department of Education prior to July 1, 2011 or the district-administered educational leadership induction program after July 1, 2011. Once employed as a school/district educational leader, the individual has three years to complete the induction program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1823 (October 2006), amended LR 33:819 (May 2007), LR 38:43 (January 2012)

§707. Educational Leader Certificate Level 2

A. - A.1.b. ...

c. have completed the Educational Leader Induction Program under the administration of the Louisiana Department of Education prior to July 1, 2011 or the district-administered educational leadership induction program after July 1, 2011:

i. ...

ii. the induction program must be completed within a three-year period;

1.d. - 2.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1823 (October 2006), amended LR 33:820 (May 2007), LR 38:43 (2012).

Subchapter B. Out-of-State Administrative Certification Structure

§721. Out-of-State Principal Level 1 (OSP1)

A. This is a three year, non-renewable Louisiana certificate issued to an individual who holds comparable out-of-state certification as a principal or educational leader. It authorizes the individual to serve as a principal or assistant principal in a Louisiana public school system, and is issued when upon employment as a principal or assistant principal in a Louisiana public school system.

1. Eligibility requirements:

a. - d. ...

2. Educational Leader Induction Program Requirements. Upon employment as a principal or an assistant principal in a Louisiana public school system, an individual holding an OSP1 certificate must enroll in the state-approved Educational Leader Induction Program under the direction of the Louisiana Department of Education prior to July 1, 2011 or the district-administered educational leadership induction program after July 1, 2011. The individual has three years to complete the induction program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10, and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1824 (October 2006), amended LR 35:2325 (November 2009), LR 38:43 (January 2012).

§723. Out-of-State Principal Level 2 (OSP2)

A. This certificate is valid for five years and is renewable every five years, based upon successful completion and verification of required continuing learning units.

1. Eligibility requirements:

a. - b.iii. ...

c. completion of the Educational Leader Induction Program under the administration of the Louisiana Department of Education prior to July 1, 2011 or the district-administered education leadership induction.

2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10, and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1825 (October 2006), amended LR 35:2325 (November 2009), LR 36:882 (March 2011), LR 38:43 (January 2012).

Catherine R. Pozniak
Executive Director

1201#046

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Requirements to add Early Childhood (Grades PK-3)(LAC 28:CXXXI.605)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel: §605. Requirements to add Early Childhood (Grades PK-3)*. The policy revision will allow candidates the option of completing nine semester hours in reading or passing the Praxis Teaching Reading exam (#0204) for add-on purposes. The Praxis elementary content exam and early childhood coursework requirements will be retained. This policy revision will align the early childhood add-on requirements to the middle grades add-on policy that was adopted by BESE in February 2011.

**Title 28
EDUCATION**

**Part CXXXI. Bulletin 746—Louisiana Standards for
State Certification of School Personnel**

**Chapter 6. Endorsements to Existing Certificates
Subchapter A. Regular Education Level and Area
Endorsements**

**§605. Requirements to add Early Childhood (Grades
PK-3)**

A. - B.3. ...

C. Individuals holding a valid Early Interventionist Certificate must achieve the following:

1. passing score for Praxis Elementary Education: Content Knowledge exam (#0014);
2. twelve credit hours of combined nursery school and kindergarten coursework (art, math, science, social studies); and
3. nine semester hours of reading coursework or passing score for Praxis Teaching Reading exam (#0204).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1815 (October 2006), amended LR 37:883 (March 2011), repromulgated LR 37:1561 (June 2011), amended LR 37:3215 (November 2011), amended LR 38:44 (January 2012).

Catherine R. Pozniak
Executive Director

1201#047

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Requirements to add Elementary (Grades 1-5)(LAC 28:CXXXI.607)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §607. Requirements to add Elementary (Grades 1-5). The policy revision will allow candidates the option of completing nine semester hours in reading or passing the Praxis teaching reading exam (#0204) and would eliminate the 36 semester hours of coursework, since teachers will have demonstrated content mastery by passing the Praxis elementary content exam. This policy revision will align the elementary grades 1-5 add-on requirements to the middle grades add-on policy that was adopted by BESE in February 2011.

**Title 28
EDUCATION**

**Part CXXXI. Bulletin 746—Louisiana Standards for
State Certification of School Personnel**

**Chapter 6. Endorsements to Existing Certificates
Subchapter A. Regular Education Level and Area
Endorsements**

§607. Requirements to add Elementary (Grades 1-5)

A. Individuals holding a valid early childhood certificate (e.g., PK-K, PK-3) must achieve the following:

1. passing score for Praxis elementary education: content knowledge exam (#0014);
2. passing score for Praxis principles of learning and teaching K-6 exam; and
3. nine semester hours of reading or passing score for Praxis teaching reading exam (#0204).

B. - B.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1815 (October 2006), amended LR 38:44 (January 2012).

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12013048

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—School Nurse (LAC 28:CXXXI.411)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §411. School Nurse. The policy revision allows the renewal of a School Nurse certification by the completion of 15 contact hours or 5 Continuing Education Units (CEUs) of professional development, which will align with the State Board of Nursing. In addition, the policy will give school nurses the option of completing contact hours or semester hours for renewal of their Ancillary School Nurse certificate.

**Title 28
EDUCATION**

**Part CXXXI. Bulletin 746—Louisiana Standards for
State Certification of School Personnel**

**Chapter 4. Ancillary School Service Certificates
Subchapter A. General Ancillary School Certificates**

§411. School Nurse

- A. Type C School Nurse—valid for three years.
 1. Eligibility requirements:
 - a. current Louisiana licensure as a registered professional nurse; and
 - b. minimum of two years experience as a registered nurse.
 2. Renewal Guidelines. May be renewed once for a three year period, upon presentation of a copy of current Louisiana licensure as a registered professional nurse and upon request of Louisiana employing authority.
- B. Type B School Nurse—valid for five years.
 1. Eligibility requirements:
 - a. current Louisiana licensure as a registered professional nurse; and
 - b. three years of experience as a Type C school nurse.
 2. Renewal guidelines:
 - a. completion of 15 contact hours of professional development to equal five hours of continuing education units (CEUs) in a variety of activities designed to maintain

and expand a school nurse's skills and to ensure the provision of quality services. These contact hours must be completed through the American Nurses Credentialing Center (ANCC), the state Board of Nursing or district approved professional development; or

b. six semester hours earned in the field of nursing, education, and/or other health related subjects completed at a regionally accredited college or university since the Type B certificate was issued; and

c. current Louisiana licensure as a registered professional nurse.

C. Type A School Nurse—valid for five years.

1. Eligibility requirements:

a. current Louisiana licensure as a registered professional nurse;

b. baccalaureate degree in nursing or a health-related field from a regionally accredited college or university; and

c. five years experience as a certified Type B school nurse.

2. Renewal guidelines:

a. completion of 15 contact hours of professional development to equal five hours of continuing education units (CEUs) in a variety of activities designed to maintain and expand a school nurse's skills and to ensure the provision of quality services. These contact hours must be completed through the American Nurses Credentialing Center (ANCC), the state Board of Nursing or district approved professional development; or

b. six semester hours earned in the field of nursing, education, and/or other health related subjects completed at a regionally accredited college or university since the Type A certificate was issued; and

c. current Louisiana licensure as a registered professional nurse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1808 (October 2006), amended LR 36:1998 (September 2010), LR 37:883 (March 2011), amended LR 38:44 (January 2012).

Catherine R. Pozniak
Executive Director

1201#049

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Social Worker (LAC 28:CXXXI.413)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §413. Social Worker. The policy revision will align state policy with amendments made to R.S. 37:2701 changing the name of the social worker license from graduate social worker (GSW) to Licensed Master's Social Worker (LMSW) and also will

require license holders to earn continuing education units for license renewal.

Title 28 EDUCATION

Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel Chapter 4. Ancillary School Services Certificates Subchapter A. General Ancillary School Certificates §413. Social Worker

A. Social Worker—issued to individuals with master's degrees in social work or social welfare.

B. Provisional School Social Worker—valid for three years.

1. Eligibility requirements:

a. a licensed master's social worker (LMSW) issued under R.S. 37:2701 et seq.;

b. an individual must work under the supervision of a licensed clinical social worker (LCSW) for a minimum of one hour per week if providing clinical social work services and complete a minimum of 20 continuing professional development/education units (CEUs) each year of the validity of this certificate. Of the 20 CEUs, 10 hours must be related to the provision of school social work services and/or services to children. These CEUs will remain on file at the employing system.

2. Renewal Guidelines—nonrenewable.

C. Qualified School Social Worker

1. Eligibility requirements—one of the following:

a. licensed clinical social worker (LCSW), in accordance with R.S. 37:2701 et seq.;

b. certificate as a licensed master's social worker (LMSW), in accordance with R.S. 37:201 et seq.; receive a minimum of one hour per week of supervision by a LCSW, if providing clinical social work services; and have work experience in one or more of the following social work practice settings within the past five years:

i. school setting;

ii. mental health setting;

iii. correction setting;

iv. family/child/community service agency;

v. medical social services in which social services were delivered to families and children;

vi. private clinical practice in which social work services were delivered to adults, children, and families; or

vii. have graduate social worker field experience in the above social work practice settings plus two years of work experience, to be judged by the Louisiana State Board of Certified Social Work Examiners.

2. This certificate is valid provided the holder maintains current Louisiana licensure as a social worker and completes a minimum of 20 continuing professional development/education units (CEUs) in the years of the validity of this certificate. Of the 20 CEUs, 10 hours must be related to the provision of school social work services and/or services to children. These CEUs will remain on file at the employing system. A social worker who changes employing school systems must provide a copy of his/her current Louisiana license to serve as a social worker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1809 (October 2006), amended LR 38:45 (January 2012).

Catherine R. Pozniak
Executive Director

1201#050

RULE

Department of Environmental Quality Office of the Secretary

Removal of Recyclable Material from a Non-Processing Transfer Station (LAC 33:VII.115 and 508)(SW056)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Solid Waste regulations, LAC 33:VII.508.N (SW056).

This Rule will clarify and encourage the removal of non-putrescible commercial recyclable waste at non-processing transfer stations even in the presence of municipal solid waste. This Rule will clarify the sort-process of the waste stream at the transfer station and describe what qualifies as acceptable non-putrescible commercial recyclable matter that can be recovered. The basis and rationale for this Rule is to allow the recovery of valuable materials which will reduce the volume of waste sent for landfill disposal. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part VII. Solid Waste

Subpart 1. Solid Waste Regulations

Chapter 1. General Provisions and Definitions

§115. Definitions

A. For all purposes of these rules and regulations, the terms defined in this Section shall have the following meanings, unless the context of use clearly indicates otherwise.

* * *

Process—a method or technique, including recycling, recovering, compacting (but not including compacting that occurs solely within a transportation vehicle or at a non-processing transfer station), composting, incinerating, shredding, baling, recovering resources, pyrolyzing, or any other method or technique that is designed to change the physical, chemical, or biological character or composition of a solid waste to render it safer for transport, reduced in volume, or amenable for recovery, storage, reshipment, or resale. The definition of *process* does not include treatment of wastewaters to meet state or federal wastewater discharge permit limits. Neither does the definition include activities of an industrial generator to simply separate wastes from the manufacturing process, nor does it include separating

recyclable material from commercial waste streams at a *non-processing transfer station*.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 22:279 (April 1996), amended by the Office of Waste Services, Solid Waste Division, LR 23:1145 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2514, 2609 (November 2000), amended by the Office of Environmental Assessment, LR 31:1576 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1019 (June 2007), LR 34:1023 (June 2008), LR 34:1399 (July 2008), LR 37:1563 (June 2011), LR 38:46 (January 2012).

Chapter 5. Solid Waste Management System Subchapter A. General Standards for Nonpermitted Facilities

§508. Standards Governing Non-Processing Transfer Stations for Solid Waste

A. - B. ...

C. No processing or disposal shall occur at a non-processing transfer station except for facilities separating non-putrescible recyclable materials from commercial solid waste.

1. Recovered commercial recyclable materials shall not contain putrescible waste and shall be relatively dry. Types of recyclable materials that are acceptable include:

- a. recyclable paper;
- b. recyclable wood;
- c. recyclable glass;
- d. mixed rigid plastics (e.g. 5-gallon buckets, crates, and pallets);
- e. ferrous and non-ferrous metal materials; and
- f. other acceptable commercial recyclable materials approved by the administrative authority.

2. Identification of loads containing acceptable commercial recyclable materials shall occur by:

- a. driver identification; and
- b. visual inspection of open top loads before they reach the tipping floor.

3. Recyclable materials shall be stored in enclosed containers such as trailers, compaction vehicles and enclosed buildings. Staging of the collected recyclable materials shall not exceed 30 days.

4. Non-processing transfer stations that separate non-putrescible commercial recyclable materials shall submit an annual recycling report to the Office of Environmental Services by August 1 of each year.

D. - M. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1034 (June 2007), amended LR 33:2142 (October 2007), LR 34:613 (April 2008), LR 35:925 (May 2009), LR 38:46 (January 2012).

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1201#016

RULE

Office of the Governor Division of Administration Office of State Uniform Payroll

Payroll Deduction
(LAC 4:III.101, 106, 112, 114, 127 and 131)

In accordance with R.S. 42:455, notwithstanding any other provision of law to the contrary, the Office of the Governor, Division of Administration, Office of State Uniform Payroll adopts amendments to the rule regarding payroll deductions for state employees. The purpose of the amendment is to adjust the timelines for the submission of applications, policy changes, and enhancements for statewide vendor deductions so that they coincide with the new Office of Group Benefits Flexible Benefits Plan year and to make technical changes.

Title 4 ADMINISTRATION Part III. Payroll

Chapter 1. Payroll Deductions

§101. Definitions

* * *

Administrative Coordinator—a statewide vendor designated representative who provides the single authorized contact for communication between the vendor and state departments/agencies, company representatives, the Division of Administration, Office of State Uniform Payroll, payroll systems outside of the LaGov HCM payroll system and any administrative contract(or).

Agency Number—three digit identifier representing a single agency in the LaGov HCM payroll system which serves as a key for processing and reporting.

* * *

Flexible Benefits Plan Year—the annual period of time designated for participation (e.g., January 1 through December 31).

* * *

Integrated Statewide Information System Human Resource Payroll System (ISIS HR)—Repealed.

* * *

LaGov Human Capital Management Payroll System (LaGov HCM)—the statewide system administered by the Division of Administration, Office of State Uniform Payroll to provide uniform payroll services to state agencies.

* * *

Statutory Vendors—any entity having deductions mandated or permitted by federal or state statute which includes, but is not limited to union dues, credit unions, IRC §457 and §403(b) plans, health and life insurance products sponsored by the Office of Group Benefits, retirement systems, Student Tuition Assistance and Revenue Trust Program (START), and qualified United Way entities.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 12:763 (November 1986), amended LR 16:402 (May 1990), LR 19:318 (March 1993), LR 22:22 (January 1996), LR

26:1026 (May 2000), LR 32:84 (January 2006), LR 38:47 (January 2012).

§106. Statewide Vendor Annual Renewal and New Application Process

A. ...

B. Written notice of requests for a new statewide vendor payroll deduction or for current vendors to add additional products or to add additional policy forms or service plans under the current products should be sent to OSUP prior to July 1 annually, in order for the vendor to receive an application form from OSUP. Applications for the purpose of providing deductions for IRA's, annuities, noninsurance investment programs or group plans are not permitted.

C. On or before August 1 annually, OSUP will provide deduction application forms along with instructions for completion to each renewal and new entity on file.

D. On or before August 31 annually, renewal and new applications must be completed and submitted to the Division of Administration, Office of State Uniform Payroll, P.O. Box 94095, Baton Rouge, LA 70804 or 1201 North Third Street, Ste. 6-150, 70802.

1. - 2.g. ...

E. On or before October 1 each year, OSUP will conduct a compliance review and shall notify vendors of any products that will be removed due to not meeting the participation requirements in §114.C.3. In a separate letter, the vendor will be notified whether their annual application has been conditionally approved.

F. Between September and April each year, the EPBC shall conduct a thorough review of all products authorized for deduction and new applications.

1. - 3. ...

G. On or before April 1 annually, the EPBC shall issue a summary report of opinions resulting from the annual review of products and new applications, along with recommended actions to the commissioner of administration.

H. ...

I. On or before May 1 annually, the commissioner of administration shall advise OSUP whether EPBC recommendations relative to current products and new applications have been accepted or denied.

J. On or before May 31 annually, OSUP will:

1. - 2. ...

3. notify LaGov HCM payroll system user agencies and other departments/agencies and governing boards of authorized deductions by vendor and product name, providing LaGov HCM system information and the effective date. Governing boards shall notify universities.

K. Payroll systems outside of the LaGov HCM payroll system will advise vendors whether the deduction will be established.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 32:86 (January 2006), amended LR 38:47 (January 2012).

§112. Statewide Vendor Requests for Enhancements/Changes to Products

A. Requests for enhancements to existing statewide vendor products, policies or service plans must be submitted to OSUP for review and approval by April 1 and October 1 annually.

1. - 1.e. ...
2. OSUP and the EPBC will review the request and notify the vendor of approval or denial by June 1 and December 1 annually.

a. If approved, OSUP will include in the approval notification the procedures for implementing the enhancement for July 1 and January 1 annually.

b. ...

B. Notification of policy changes must be submitted to OSUP by July 1 annually.

1. - 1.c. ...

2. OSUP will review the information submitted and notify the vendor by September 30 annually and provide procedures for implementing the policy change for January 1 annually.

B.3. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 26:1027 (May 2000), amended LR 32:87 (January 2006), LR 38:47 (January 2012).

§114. Statewide Vendor Requirements and Responsibility

A. - C.2. ...

3. maintain individual product (product categories as defined by OSUP) participation levels that meet or exceed 100 employees paid through the LaGov HCM payroll system. Vendors will be allowed 12 months after initial product approval to meet the minimum product participation requirements;

4. - 5.c. ...

d. the authorization must specify product name, IRC §125 eligibility, monthly premium or fee, and the semi-monthly (24 annually) premium or fee. Statewide vendor deductions in the LaGov HCM payroll system must be semi-monthly deduction amounts only (to the second decimal place). Payroll systems outside of the LaGov HCM payroll system which permit monthly deductions may continue same;

5.e. - 8.a. ...

b. monthly reconciliation exception listing shall identify the employee by Social Security number and payroll agency number and shall be grouped within payroll agency numbers for LaGov HCM payroll system agencies and similarly for payroll systems outside of the LaGov HCM payroll system;

9. furnish evidence of reconciliation to OSUP as requested by that office. Like verification may be required by other payroll systems outside of the LaGov HCM payroll system;

C.10. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 32:87 (January 2006), amended LR 38:48 (January 2012).

§127. Department/Agency Responsibility

A. - B.5. ...

6. process refunds for amounts previously deducted from any vendor which receives LaGov HCM payments only as directed by OSUP policy. Payroll systems outside of

the LaGov HCM payroll system shall establish written policy for remittance and refund of deductions taken;

7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 12:763 (November 1986), amended LR 16:402 (May 1990), LR 19:318 (March 1993), LR 22:22 (January 1996), LR 26:1031 (May 2000), LR 32:90 (January 2006), LR 38:48 (January 2012)

§131. Fees

A. Data, information, reports, or any other services provided to any vendor or any other party by the LaGov HCM payroll system or other state payroll system may be subject to payment of a fee for the cost of providing said data, information, reports, and/or services in accordance with the Uniform Fee Schedule established by rule promulgated by the DOA under R.S. 42:458.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 12:763 (November 1986), amended LR 16:402 (May 1990), LR 19:318 (March 1993), LR 22:22 (January 1996), LR 26:1031 (May 2000), LR 32:90 (January 2006), LR 38:48 (January 2012).

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1201#008

RULE

Office of the Governor Homeland Security and Emergency Preparedness

Homeland Security and Emergency Preparedness
(LAC 55:XXI.Chapters 1, 3, and 5)

Under the authority of the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the director has amended the agency's evacuation and sheltering regulations contained in LAC 55:XXI.Chapters 1 and 3, and adopt Chapter 5 (Resource Allocation and Distribution of Non-federal Cost Share).

The Rule applies to actions taken by the state and local governments in preparation for, and in response to, disasters impacting the state of Louisiana. The Rule will implement changes intended to broaden the Rule's applicability to encompass all hazards that may threaten the state; synchronize reporting of data relevant to preparing for and responding to disasters; require a parish to identify, inventory, report, and utilize its own resources before requesting state resources; provide factors for the agency to consider in allocating state resources in response to a disaster; and, require a parish requesting state evacuation or sheltering assistance to bear any costs not reimbursed by the federal government unless otherwise determined by the commissioner of the Division of Administration.

Title 55
PUBLIC SAFETY
Part XXI. Homeland Security and
Emergency Preparedness

Chapter 1. General Provisions

§101. Overview

A. Act 35 of the First Extraordinary Session of 2006, effective on March 1, 2006, established the Governor's Office of Homeland Security and Emergency Preparedness in R.S. 29:725.

B. Revised Statutes 29:727(E)(13) added by Act 36 of the First Extraordinary Session of 2006, effective February 23, 2006, requires the Office of Homeland Security and Emergency Preparedness, prior to May 31, 2006 to promulgate standards and regulations in accordance with the Administrative Procedure Act for local governments when a mandatory evacuation has been ordered in response to a weather event or disaster, of people located in high risk areas utilizing all available modes of transportation, including but not limited to local school and municipal buses, government-owned vehicles, vehicles provided by volunteer agencies, and trains and ships to public shelters located outside of the high risk area with priority consideration being given to the special needs of the following classes of people:

1. people with specific special needs such as the elderly and the infirm;
2. tourists;
3. those who refuse to leave;
4. those without personal transportation.

C. Revised Statutes 29:727(E)(14) added by Act 36 of the First Extraordinary Session of 2006, effective February 23, 2006, requires the Office of Homeland Security and Emergency Preparedness, prior to May 31, 2006 to promulgate standards and regulations in accordance with the Administrative Procedure Act for local governments when a mandatory evacuation has been ordered for the evacuation or safe housing of essential workers located in high risk areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 33:646 (April 2007), amended LR 38:49 (January 2012).

§103. Goals and Objectives

A. The goals of these regulations are:

1. to protect citizens who cannot protect themselves when threatened or endangered by a weather event or disaster;
2. to reduce loss of life due to impediments to self-evacuation from a weather event or disaster;
3. to protect essential workers whose jobs require that they remain in harm's way before, during and after a weather event or disaster; and
4. to protect personal liberty while preserving law and order in areas evacuated due to the threat of a weather event or disaster.

B. The objectives of these regulations are:

1. to identify the population which lacks means to self-evacuate;
2. to identify and provide for the use of the nearest available transportation resources for use by local governments during mandatory evacuations;

3. to identify and provide means of protection for essential workers whose employment or commission requires that they remain in areas susceptible to damage and destruction wrought by weather events or disasters; and

4. to provide for establishment of rules by local government for citizens in high risk areas who refuse to leave when a mandatory evacuation is ordered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 33:646 (April 2007), LR 38:49 (January 2012).

§105. Definitions

At Risk Population—people who fall within the following non-exclusive categories:

1. those without means of personal transportation;
2. the infirm who are not living in a public or private health care facility;
3. nursing home residents;
4. private hospital patients;
5. other special needs who are not confined to a health care facility;
6. hotel and motel guests.

Contiguous Risk Area—any parish, not directly threatened by a weather event or disaster requiring the evacuation of some or all of its citizens, that can render assistance to a high risk area.

Essential Worker—persons working in public safety, government, disaster response, health care, or private business as designated and deemed necessary and/or critical for disaster response by their employer or by virtue of their official commission.

High Risk Area—any parish, directly threatened by a weather event or disaster requiring the evacuation of some or all of its citizens.

Local Government—a parish or municipality of the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 33:646 (April 2007), amended LR 38:49 (January 2012).

Chapter 3. Risk Assessment

§301. Biennial Risk Assessment

A. Every parish and municipality shall perform a biennial risk assessment in the form and format prescribed by the Governor's Office of Homeland Security and Emergency Preparedness for the at-risk population with the results thereof to be provided to the Governor's Office of Homeland Security on or before December 1, 2006 and on or before that date every second year thereafter as prescribed by the Governor's Office of Homeland Security and Emergency Preparedness.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 33:646 (April 2007), amended LR 38:49 (January 2012).

§303. Evacuating and Sheltering Private Nursing Home Residents

A. The evacuation and sheltering of private nursing home residents and private hospital patients is and shall

remain the primary responsibility of the host health care facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 33:646 (April 2007), amended LR 38:49 (January 2012).

§305. Municipal Risk Assessment

A. The municipal risk assessment shall consist of a survey of the people living within the corporate limits to identify the people in each category of the at-risk population defined herein and the essential workers as defined herein, and to determine whether the individuals so identified may need sheltering in a general population shelter or a special needs shelter as those terms are defined by the Louisiana Department of Health and Hospitals. To the greatest extent possible, the municipal risk assessment should be based upon reliable sources of information such as the most current U.S. Census data, historical seasonal tourism estimates, average population of hospital and nursing home residents, and numbers of anticipated essential workers responding to an incident. The results of the municipal survey shall be furnished to the parish Office of Homeland Security and Emergency Management established pursuant to R.S. 29:727(B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 33:646 (April 2007), amended LR 38:50 (January 2012).

§307. Parish Risk Assessment

A. The parish risk assessment shall consist of a survey of the people living outside the corporate limits of any municipality to identify the people in the each category of the at-risk population defined herein and the essential workers as defined herein, and to determine whether the individuals so identified may need sheltering in a general population shelter or a special needs shelter as those terms are defined by the Louisiana Department of Health and Hospitals.

B. To the greatest extent possible, the parish risk assessment should be based upon reliable sources of information such as the most current U.S. Census data, historical seasonal tourism estimates, average population of hospital and nursing home residents, and numbers of anticipated essential workers responding to an incident.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 33:647 (April 2007), LR 38:50 (January 2012).

§309. Transportation

A. Every parish and municipality shall prepare an inventory in the form and format prescribed by the Governor's Office of Homeland Security and Emergency Preparedness of all local modes of transportation subject to the parish president's emergency powers, including but not limited to school and municipal buses, government-owned vehicles, vehicles expected to be provided by volunteer agencies, and trains or ships, for use in a mandatory evacuation. A copy of the municipal inventory shall be provided to the parish office of homeland security and

emergency management established pursuant to R.S. 29:727(B). A copy of the combined parish and municipal inventory shall be submitted biennially beginning on or before December 1, 2006, and on or before that date in every second year thereafter to the Governor's Office of Homeland Security and Emergency Management as prescribed by the Governor's Office of Homeland Security and Emergency Preparedness.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 33:647 (April 2007), amended LR 38:50 (January 2012).

§311. Evacuation and Sheltering Plan

A.1. The parish Office of Homeland Security and Emergency Management established pursuant to R.S. 29:727(B), using the combined list of at-risk population and essential workers and the combined list of available means of transportation, shall develop an evacuation and sheltering plan for each category of at-risk population to include at a minimum:

- a. use of locally available, or non-local, means of transportation for evacuation of all categories of the at-risk population;
- b. means of notification of the different categories of the at-risk population of a mandatory evacuation;
- c. means of notification of the different categories of the at-risk population of available transportation;
- d. determination of individuals and facilities where the risk of sheltering in place outweighs the risk of loss of life during the evacuation process;
- e. coordination of transportation resources with a shelter destination outside of a high risk area;
- f. provisions for medical emergencies which occur during the evacuation process;
- g. plans and procedures to execute the evacuation and sheltering plan within 36 hours of declaration of a voluntary evacuation and within 12 hours of declaration of a mandatory evacuation.

2. The plan shall be submitted to GOHSEP on or before March 1, 2007 and updated in the form and format prescribed by the Governor's Office of Homeland Security and Emergency Preparedness in conjunction with the other biennial reports described in this Part.

B. The parish Office of Homeland Security and Emergency Management shall develop an evacuation and sheltering plan for essential workers which shall include, at a minimum, provisions for food, water, and shelter for at least 72 hours subsequent to a weather event or disaster.

C. Each parish and municipality shall prepare for the possibility of those citizens who refuse to leave when a mandatory evacuation is ordered and shall respect the rights of personal liberty and freedom of all citizens, while protecting and preserving law and order and accomplishing the goals and objectives enumerated in this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 33:647 (April 2007), amended LR 38:50 (January 2012).

Chapter 5. Resource Allocation and Distribution of Non-federal Cost Share

§501. Evacuation

A. The Governor’s Office of Homeland Security and Emergency Preparedness, in preparing and maintaining regional and statewide evacuation plans and in responding to an actual disaster or emergency, shall allocate state evacuation resources in accordance with parish compliance with the requirements of this Part, to include the following factors:

1. the parish’s designation as a high-risk area or contiguous risk area;
2. the parish’s geographic proximity to the weather event or disaster, in relation to other parishes in the high risk area;
3. the risk assessment prepared by the parish and municipality identifying the at-risk population and essential workers of the parish;
4. the transportation inventory prepared by the parish and municipality identifying all local modes of transportation subject to the parish president’s emergency powers, and non-local modes of transportation with which the parish has executed contingency agreements for transporting its at-risk population during a mandatory evacuation;
5. the evacuation plan prepared by the parish making maximum utilization of its own local modes of transportation subject to the parish president’s emergency powers for its at-risk population and essential workers;
6. whether the parish president has declared an emergency and evacuation in conjunction with requesting state evacuation assistance.

B. The state will rely on the parish’s transportation inventory submitted in accordance with this Part for planning purposes and, when requested by the parish, use its best efforts to supplement the parish’s evacuation assets with state evacuation resources. However, for a disaster or emergency in which a parish requests state or federal evacuation assistance to support an evacuation, the parish’s request for state evacuation assistance shall serve as acknowledgement of the parish’s responsibility for that portion of the nonfederal share of the evacuation costs allocable to the services provided by the state to that parish. All costs associated with the evacuation services provided by the state shall be allocated to the parish unless otherwise determined by the commissioner of the Division of Administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:725.

HISTORICAL NOTE: Promulgated by the Governor’s Office of Homeland Security and Emergency Preparedness, LR 38:51 (January 2012).

§503. Sheltering

A. The Governor’s Office of Homeland Security and Emergency Preparedness, in preparing and maintaining regional and statewide sheltering plans and in responding to an actual disaster or emergency, shall allocate state sheltering resources in accordance with the requirements of this Part, to include the following factors:

1. the parish’s designation as a high-risk area or contiguous risk area;

2. the parish’s geographic proximity to the weather event or disaster, in relation to other parishes in the high risk area;

3. the risk assessment prepared by the parish and municipality identifying the at-risk population and essential workers of the parish;

4. the shelter inventory prepared by the parish and municipality identifying all available local places of shelter subject to the parish president’s emergency powers, and non-local facilities with which the parish has executed contingency agreements for sheltering its at-risk population;

5. the evacuation plan prepared by the parish making maximum utilization of its own means of transportation for its at risk population.

B. The state will rely on the parish’s shelter inventory submitted in accordance with this Part for planning purposes and, when requested by the parish, use its best efforts to supplement the parish’s shelter assets with state shelter resources. However, for a disaster or emergency in which a parish requests state or federal shelter assistance, the parish’s request for state shelter assistance shall serve as acknowledgement of the parish’s responsibility for that portion of the nonfederal share of the shelter costs allocable to the services provided by the state to that parish. All costs associated with the shelter services provided by the state shall be allocated to the parish unless otherwise determined by the commissioner of the Division of Administration.

C. For a disaster or emergency in which a parish requests state or federal sheltering assistance, the state may assume all or part of the non-federal share of the cost of the state or federal sheltering assistance based upon compliance with this Part and availability of state funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:725.

HISTORICAL NOTE: Promulgated by the Governor’s Office of Homeland Security and Emergency Preparedness, LR 38:51 (January 2012).

Pat Santos
Interim Director

1201#051

RULE

**Department of Health and Hospitals
Board of Examiners of Nursing Facility Administrators**

**Administrator-in-Training (AIT) Waiver
(LAC 46:XLIX.713)**

Notice is hereby given in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 37:2501 et seq., that the Louisiana Board of Examiners of Nursing Facility Administrators has amended LAC 46:XLIX.713 relative to the administration of nursing facility administrators and their licensure to provide and specify an additional educational waiver option, thereby increasing administrator training choices consistent with existing requirements.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part XLIX. Nursing Facility Administrators

Chapter 7. Administrator-in-Training (AIT)

§713. Waivers

A. - B. ...

1. education. Full waiver may be granted if applicant has a Bachelor or Masters degree in health care administration or a Bachelor or Masters degree with a concentration in eldercare studies which includes a clinical internship;

a. the internship shall be consistent with all board regulations and applicable required hours and in areas of concentration. The internship requirements shall be completed within a 24 months period after acquiring 48 credit hours;

b. the applicant shall successfully pass the national exam, state exam, and the exit interview;

2. ...

a. examination. All applicants for a full waiver undergo an exit interview conducted by a board member or an authorized representative. Applicants for partial waiver may be required to undergo an exit interview in those areas for which waiver is requested;

b. non-participating facility experience. No full waiver will be granted for experience gained in a facility that is not certified for and does not participate in Medicare and/or Medicaid. All applicants applying for waiver based on experience in a non-participating facility must undergo an exit interview.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), amended LR 9:62 (February 1983), LR 10:499 (July 1984), LR 12:512 (August 1986), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Nursing Examiners of Facility Administrators, LR 37:593 (February 2011), repromulgated LR 37:887 (March 2011), amended LR 38:52 (January 2012).

Mark A. Hebert
Executive Director

1201#010

RULE

Department of Health and Hospitals
Board of Medical Examiners

Respiratory Therapists, Licensure,
Certification and Practice

(LAC 46:XLV.193-197, 2501-2575, and 5501-5519)

in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority vested in the Louisiana State Board of Medical Examiners (the "board") by the Louisiana Medical Practice Act, R.S. 37:1261-1292 and the Louisiana Respiratory Therapy Practice Act, R.S. 37:3351-3361, the board has amended its administrative rules governing the general provisions, as

well as the licensure, certification and practice of respiratory therapists in this state. The amendments are set forth below.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part XLV. Medical Professions

Subpart 1. General

Chapter 1. Fees and Costs

Subchapter I. Respiratory Therapists

§193. Scope of Subchapter

A. The rules of this Subchapter prescribe the fees and costs applicable to the licensing of respiratory therapists.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3351-3361, 37:1270 and 37:1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:908 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:239 (February 2004), LR 38:52 (January 2012).

§195. Licenses

A. For processing an application for licensing a respiratory therapist, a fee of \$125 shall be payable to the board.

B. For processing a temporary license or a temporary work permit, a fee of \$50 shall be payable to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3351-3361, 37:1270, 37:1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:908 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:240 (February 2004), LR 38:52 (January 2012).

§197. Annual Renewal

A. For processing an application for annual renewal of a respiratory therapist's license, a fee of \$85 shall be payable to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3351-3361, 37:1270 and 37:1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:240 (February 2004), LR 38:52 (January 2012).

Subpart 2. Licensure and Certification

Chapter 25. Respiratory Therapists

Subchapter A. General Provisions

§2501. Scope of Chapter

A. The rules of this Chapter govern the licensing of respiratory therapists in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2212 (November 1999), LR 38:52 (January 2012).

§2503. Definitions

A. As used in this Chapter, unless the context clearly states otherwise, the following terms and phrases shall have the meanings specified.

Advisory Committee or Committee—the Respiratory Therapy Advisory Committee, as established, appointed and organized pursuant to R.S. 37:3356 of the Act.

American Association for Respiratory Care or AARC—a professional society associated with the respiratory care profession or its successor.

Applicant—a person who has applied to the board for a license or permit to practice respiratory therapy in this state.

* * *

Certified Respiratory Therapist—also known as a Certified Respiratory Therapy Technician prior to July 1, 1999, means one who is in good standing with, and has successfully completed the entry level credentialing examination or its successor administered by the National Board for Respiratory Care.

* * *

CoARC—the Commission on Accreditation for Respiratory Care, or its successor or predecessor organizations.

* * *

License—the lawful authority to engage in the practice of respiratory therapy in the state of Louisiana, as evidenced by a certificate duly issued by and under the official seal of the board.

Licensed Respiratory Therapist or LRT—a person who is licensed by the board to practice respiratory therapy in Louisiana under the qualified medical direction and supervision of a licensed physician. The term *licensed respiratory therapist* shall be used to signify either a certified or registered respiratory therapist, or a person who was licensed by the board to practice respiratory care prior to 1991.

Medical Gases—gases commonly used in a respiratory care department in the calibration of respiratory care equipment and in the diagnostic evaluation and therapeutic management of diseases, including but not restricted to carbon monoxide, carbon dioxide, compressed air, helium, nitric oxide, nitrogen, and oxygen.

National Board for Respiratory Care or NBRC—the official national credentialing board of the profession, or its successor.

* * *

Registered Respiratory Therapist—one who is currently in good standing with, and has successfully completed the advanced practitioner registry credentialing examination or its successor administered by the National Board for Respiratory Care.

Respiratory Care—is synonymous with the term *respiratory therapy* as defined in this Chapter.

Respiratory Care Education Program—a program of respiratory therapy studies accredited by the Commission on the Accreditation for Respiratory Care (CoARC), or its predecessor or successor organizations, including programs formerly accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) in collaboration with CoARC.

Respiratory Therapy—the allied health specialty practiced under the direction and supervision of a physician involving the assessment, treatment, testing, monitoring, and care of persons with deficiencies and abnormalities of the cardiopulmonary system. Such therapy includes, but is not limited to, the following activities conducted upon the prescription or other order of a physician, advanced practice registered nurse, or physician assistant howsoever communicated and duly recorded:

a. application and monitoring of oxygen therapy, invasive and non-invasive ventilatory therapy, mechanical

ventilation, bronchial hygiene therapy and cardiopulmonary rehabilitation and resuscitation;

b. insertion and care of natural and artificial airways;

c. institution of any type of physiologic monitoring applicable to respiratory care, including but not limited to cardiopulmonary and neurological processes related to such diseases;

d. insertion and care of peripheral arterial lines;

e. administration of non-controlled drugs and medications commonly used in respiratory care that have been dispensed by a pharmacist and prescribed by a physician, advanced practice registered nurse, or physician assistant to be administered by a licensed respiratory therapist as defined in this Chapter. Nothing in this Chapter shall be construed to authorize the administration of sedatives, hypnotics, anesthetics or paralytic agents, or intravenous administration of medications, with the exception of the administration of medications necessary during cardiopulmonary arrest by a licensed respiratory therapist certified in advanced cardiac life support (ACLS), pediatric advanced life support (PALS), or in a neonatal resuscitation program (NRP);

f. pulmonary assessment, testing techniques, and therapy modification required for the implementation of physician-approved respiratory care protocols;

g. administration of medical gases and environmental control systems and their apparatus, including hyperbaric oxygen therapy;

h. administration of humidity and aerosol therapy;

i. application of chest pulmonary therapy and associated broncho-pulmonary hygiene techniques;

j. institution of physician-approved, patient-driven respiratory therapy protocols in emergency situations in the absence of a physician;

k. supervision of students;

l. performance of specific procedures and diagnostic testing relative to respiratory therapy that are ordered by a physician, advanced practice registered nurse, or physician assistant to assist in diagnosis, monitoring, treatment, and research, including:

i. drawing of arterial, venous, and capillary blood samples and other body fluids for analysis to determine laboratory values to be performed on blood gas instrumentation;

ii. collection of sputum and other body fluids for analysis;

iii. procedures involved in patient preparation and assisting a physician who is in attendance with invasive procedures related to respiratory therapy, including but not limited to bronchoscopy, chest tube insertion, and tracheotomy;

iv. measurement of expired gases in the performance of cardiopulmonary function tests common to respiratory therapy; and

v. starting of intravenous lines for the purpose of administering fluids pertinent to the practice of respiratory therapy in a special procedure area under the order of a physician, advanced practice registered nurse, or a physician assistant;

m. transcription and implementation of physician, advanced practice registered nurse, or physician assistant

orders pertinent to the practice of respiratory therapy to be provided by a licensed respiratory therapist; and

n. instruction of patient, family, and caregivers in the prevention, management, and therapeutic modalities related to respiratory therapy for patients in any setting.

Respiratory Therapy Practice Act or the Act—R.S. 37:3351-3361, as amended.

United States Government—any department, agency or bureau of the United States Armed Forces or Veterans Administration.

B. Masculine terms wherever used in this Chapter shall also be deemed to include the feminine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 19:744 (June 1993), LR 25:2212 (November 1999), LR 38:52 (January 2012).

Subchapter B. Requirements and Qualifications for Licensure

§2505. Scope of Subchapter

A. The rules of this Subchapter govern and prescribe the requirements, qualifications and conditions requisite to eligibility for licensure as a licensed respiratory therapist in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2213 (November 1999), LR 38:54 (January 2012).

§2507. Requirements for Licensure of Respiratory Therapists

A. To be eligible and qualified to obtain a respiratory therapist license, an applicant shall:

1. be at least 18 years of age;
2. be of good moral character;
3. be a high school graduate or have the equivalent of a high school diploma;
4. be a graduate of a respiratory care education program, or have successfully completed all program requirements established by the NBRC for entry level respiratory therapy credentialing;
5. possess current credentials as a certified or registered respiratory therapist granted by the National Board of Respiratory Care or its predecessor or successor organization;
6. be a citizen of the United States or possess valid and current legal authority to reside and work in the United States duly issued by the United States Citizenship and Immigration Services of the United States, Department of Homeland Security, under and pursuant to the Immigration and Nationality Act (66 Stat. 163) and the regulations thereunder (8 C.F.R.);
7. satisfy the applicable fees as prescribed by Chapter 1 of these rules;
8. satisfy the procedures and requirements for application provided by Subchapter C of this Chapter; and

9. not be otherwise disqualified for licensure by virtue of the existence of any grounds for denial of licensure as provided by the law or in these rules.

B. An applicant previously licensed to practice respiratory therapy in any other state, who has not held such a license or been engaged in the practice of respiratory therapy for more than four years immediately prior to the date of the application shall, within such four year period, have been re-credentialed with the NBRC by the successful passage of the entry level credentialing examination.

C. The burden of satisfying the board as to the qualifications and eligibility of the applicant for licensure shall be upon the applicant. An applicant shall not be deemed to possess such qualifications unless the applicant demonstrates and evidences such qualification in the manner prescribed by and to the satisfaction of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended LR 14:87 (February 1988), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 15:271 (April 1989), LR 17:479 (May 1991), LR 25:2213 (November 1999), LR 38:54 (January 2012).

§2509. Requirements for Licensure of Certified Respiratory Therapists

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended LR 14:87 (February 1988), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 15:271 (April 1989), LR 17:479 (May 1991), LR 19:745 (June 1993), LR 25:2213 (November 1999), repealed LR 38:54 (January 2010).

§2510. Recognition of Respiratory Care Education Programs

A. Graduation from a respiratory care education program, or the successful completion of all program requirements established by the NBRC for entry level respiratory therapy credentialing, is among the required qualifications for respiratory therapy licensure. This qualification shall be deemed to be satisfied if, as of the date of the applicant's graduation, or successful completion of all program requirements established by the NBRC for entry level respiratory therapy credentialing, the respiratory therapy care education program is accredited by CoARC, including programs formerly accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) in collaboration with CoARC.

B. A respiratory care education program that is not accredited, or whose accreditation has been revoked or suspended by CoARC, shall be deemed unacceptable to qualify applicants for licensure in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 19:746 (June 1993), amended LR 25:2214 (November 1999), LR 38:54 (January 2012).

§2511. License by Reciprocity

A. A person who possesses a current, unrestricted license to practice respiratory therapy issued by the medical licensing authority of another state, the District of Columbia, or a territory of the United States, shall only be eligible for licensure in this state if the applicant meets all of the qualifications for licensure specified in §2507 of this Subchapter, and satisfies the procedural and other requirements specified in Subchapters C and D of this Chapter, including but not limited to the restriction and limitation on examination set forth in §2536 of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2214 (November 1999), LR 38:55 (January 2012).

§2513. Temporary License

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-61.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2214 (November 1999), LR 38:55 (January 2012).

Subchapter C. Application

§2515. Purpose and Scope

A. The rules of this Subchapter govern the procedures and requirements applicable to application to the board for licensure of a licensed respiratory therapist in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended, Department of Health and Hospitals, Board of Medical Examiners, LR 25:2215 (November 1999), LR 38:55 (January 2012).

§2517. Application Procedure

A. Application for licensure shall be made in a format approved by the board.

B. Applications and instructions may be obtained from the board's web page or by personal or written request to the board.

C. An application for licensure under this Chapter shall include:

1. proof, documented in a form satisfactory to the board, that the applicant possesses the qualifications for licensure set forth in this Chapter;

2. one recent photograph of the applicant;

3. certification of the truthfulness and authenticity of all information, representations and documents contained in or submitted with the completed application;

4. criminal history record information;

5. payment of the applicable fee as provided in Chapter 1 of these rules; and

6. such other information and documentation as is referred to or specified in this Chapter or as the board may require to evidence qualification for licensure.

D. All documents required to be submitted to the board must be the original thereof. For good cause shown, the board may waive or modify this requirement.

E. The board may reject or refuse to consider any application which is not complete in every detail, including submission of every document or item required by the application. The board may, at its discretion, require a more detailed or complete response to any request for information set forth in the application as a condition to consideration of an application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2215 (November 1999), LR 38:55 (January 2012).

§2519. Effect of Application

A. The submission of an application for licensure to the board shall constitute and operate as an authorization by the applicant to each educational institution at which the applicant has matriculated, each governmental agency to which the applicant has applied for any license, permit, certificate or registration, each person, firm, corporation, organization or association by whom or with whom the applicant has been employed as a respiratory therapist, each physician whom the applicant has consulted or seen for diagnosis or treatment, and each professional or trade organization to which the applicant has applied for membership, to disclose and release to the board any and all information and documentation concerning the applicant which the board deems material to consideration of the application. With respect to any such information or documentation, the submission of an application for licensure to the board shall equally constitute and operate as a consent by the applicant to the disclosure and release of such information and documentation as a waiver by the applicant of any privileges or right of confidentiality which the applicant would otherwise possess with respect thereto.

B. By submission of an application for licensure to the board, an applicant shall be deemed to have given his consent to submit to physical or mental examinations if, when, and in the manner so directed by the board if the board has reasonable grounds to believe that the applicant's capacity to act as a respiratory therapist with reasonable skill or safety may be compromised by physical or mental condition, disease or infirmity, and the applicant shall be deemed to have waived all objections as to the admissibility or disclosure of findings, reports or recommendations pertaining thereto on the grounds of privileges provided by law.

C. The submission of an application for licensure to the board shall constitute and operate as an authorization and consent by the applicant to the board to disclose any information or documentation set forth in or submitted with the applicant's application or obtained by the board from other persons, firms, corporations, associations or governmental entities pursuant to this Section, to any person, firm, corporation, association or governmental entity having a lawful, legitimate and reasonable need therefor, including, without limitation, the respiratory care licensing authority of any state, the National Board for Respiratory Care, the Louisiana Department of Health and Hospitals, state, county or parish and municipal health and law enforcement agencies and the armed services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2215 (November 1999), LR 38:55 (January 2012).

Subchapter D. Examination

§2521. Purpose and Scope

A. The rules of this Subchapter govern the procedures and requirements applicable to the examination for the licensure of respiratory therapists.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2216 (November 1999), LR 38:56 (January 2012).

§2523. Designation of Examination

A. The examinations accepted by the board pursuant to R.S. 37:3354 are the National Board for Respiratory Care entry level credentialing examination and the advanced practitioner registry credentialing examination or their successor(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2216 (November 1999), LR 38:56 (January 2012).

§2525. Eligibility for Examination

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2216 (November 1999), LR 38:56 (January 2012).

§2527. Dates, Places of Examination

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2216 (November 1999), LR 38:56 (January 2012).

§2529. Administration of Examination

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), repromulgated by Department of Health and Hospitals, Board of Medical Examiners, LR 25:2216 (November 1999), LR 38:56 (January 2012).

§2531. Subversion of Examination Process

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), repromulgated by the Department of

Health and Hospitals, Board of Medical Examiners, LR 25:2216 (November 1999), LR 38:56 (January 2012).

§2533. Finding of Subversion

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), repromulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2217 (November 1999), LR 38:56 (January 2012).

§2535. Sanctions for Subversion of Examination

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), repromulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2217 (November 1999), LR 38:56 (January 2012).

§2536. Restriction, Limitation on Examination

A. An applicant who failed to obtain a passing score upon taking the entry level credentialing examination offered by the NBRC four times shall be ineligible for licensure under this Chapter.

B. An applicant who is ineligible for licensure pursuant to Subsection A of this Section, shall regain licensure eligibility upon the successful completion of the advanced practitioner registry credentialing examination offered by the NBRC; provided, however, that an applicant who fails to achieve a passing score upon four attempts of either part of such examination shall not thereafter be considered eligible for licensing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended LR 14:87 (February 1988), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:479 (May 1991), LR 25:2217 (November 1999), LR 38:56 (January 2012).

§2537. Passing Score

A. An applicant will be deemed to have successfully passed a credentialing examination if he attains a score equivalent to that required by the National Board for Respiratory Care as a passing score.

B. Applicants for licensure shall be required to authorize the National Board for Respiratory Care to release their test scores to the board each time the applicant-examinee attempts the examination according to the procedures for such notification established by the National Board for Respiratory Care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2217 (November 1999), LR 38:56 (January 2012).

§2539. Lost, Stolen, or Destroyed Examinations

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), repromulgated by the Department of

Health and Hospitals, Board of Medical Examiners, LR 25:2218 (November 1999), LR 38:56 (January 2012).

Subchapter E. Licensure Issuance, Termination, Renewal, and Reinstatement

§2540. Issuance of License

A. If the qualifications, requirements and procedures prescribed or incorporated in Subchapter B this Chapter are met to the satisfaction of the board, the board shall issue a license to the applicant to practice respiratory therapy in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2218 (November 1999), LR 38:57 (January 2012).

§2541. Expiration of License

A. Every license issued by the board under this Chapter shall expire, and thereby become null, void and to no effect each year on the last day of the month in which the licensee was born.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1218 (December 1996), LR 24:1502 (August 1998), LR 25:2218 (November 1999), LR 38:57 (January 2012).

§2543. Renewal of License

A. Every license issued by the board under this Subchapter shall be renewed annually on or before the last day of the month in which the licensee was born by submitting to the board:

1. a renewal application in a format prescribed by the board;
2. the renewal fee prescribed in Chapter 1 of these rules; and
3. documentation of not less than ten contact hours of approved continuing professional education within the past twelve months as prescribed by Subchapter G of these rules.

B. Renewal applications and instructions may be obtained from the board's web page or upon personal or written request to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1218 (December 1996), LR 24:1502 (August 1998), LR 25:2218 (November 1999), LR 38:57 (January 2012).

§2545. Reinstatement of License

A. A license which has expired may be reinstated by the board subject to the conditions and procedures hereinafter provided.

B. An application for reinstatement shall be submitted in a format approved by the board and be accompanied by:

1. a statistical affidavit in a form provided by the board;
2. a recent photograph;
3. proof of ten hours of approved continuing professional education for each year that the license lapsed, up to a total of thirty hours, as set forth in Subchapter G of this Chapter;

4. such other information and documentation as is referred to or specified in this Chapter or as the board may require to evidence qualification for licensure; and

5. the renewal fee set forth in Chapter 1 of these rules, plus a penalty computed as follows:

a. if the application for reinstatement is made less than two years from the date of license expiration, the penalty shall be equal to the renewal fee;

b. if the application for reinstatement is made more than two years from the date of license expiration, the penalty shall be equal to twice the renewal fee.

C. An applicant who has not been licensed to practice respiratory therapy or engaged in the practice of respiratory therapy in any state for more than four years immediately prior to the date of the application shall, within such four year period, have been re-credentialed with the NBRC by the successful passage of the entry level credentialing examination. Such an applicant shall not be required to furnish evidence of continuing professional education as otherwise required by §2545.B.3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1218 (December 1996), LR 25:2218 (November 1999), LR 38:57 (January).

§2547. Temporary License

A. The board may issue a 6-month temporary license, also known and designated as an "examination permit," to an individual who has made application to the board for a license as a respiratory therapist under the following terms and conditions.

1. To be eligible for a 6-month examination permit an applicant shall:

a. be qualified for respiratory therapy licensure under §2507.A, except for having taken and passed the required NBRC credentialing examination;

b. have taken, or made application to take, the required NBRC credentialing examination and be awaiting the administration and/or reporting of scores thereon; and

c. have applied within one year of the applicant's date of graduation from a respiratory care education program or the successful completion of all program requirements established by the NBRC for entry level respiratory therapy credentialing. Exceptions may be made at the discretion of the board.

2. An examination permit shall be effective for 6 months and shall expire and become null and void on the earlier of:

a. six months from the date of issuance;

b. the date on which the board takes action on the application following notice of:

i. the applicant's successful completion of the NBRC credentialing examination; or

ii. the applicant's fourth unsuccessful attempt to pass the NBRC entry level credentialing examination.

3. An examination permit shall not be renewed but may be extended only once for a maximum period of 3 months based on an appeal identifying extenuating circumstances. Such an appeal shall be submitted to the

board in writing at least thirty days prior to the expiration of the examination permit. Requests for an extension may be referred to the advisory committee for review and recommendation to the board. The advisory committee or the board may require additional documents from the licensee including, but not limited to:

- a. licensing examination results for all attempts;
- b. evidence of having attended entry level examination review courses; and/or
- c. proof of extenuating circumstances preventing the licensee from attempting the licensing examination.

4. An examination permit that is extended under this Subsection shall be effective for not more than 3 months and shall, in any event, expire and become null and void on the earlier of:

- a. three months from the date of issuance;
- b. the date on which the board takes action on the application following notice of:
 - i. the applicant's successful completion of the NBRC credentialing examination; or
 - ii. the applicant's fourth unsuccessful attempt to pass the NBRC entry level credentialing examination.

B. The maximum term of an examination permit shall be reduced by any amount of time that an applicant held a temporary work permit issued under this Subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 15:271 (April 1989), LR 17:480 (May 1991), LR 19:746 (June 1993), LR 25:2218 (November 1999), LR 38:57 (January 2012).

§2548. Temporary Work Permit

A. The board may grant a temporary work permit to practice, effective for a period of 60 days, to an applicant who has made application to the board for a license as a respiratory therapist, who:

1. is currently credentialed in respiratory therapy by the NBRC, and who is not otherwise demonstrably ineligible for licensure under §2507.A of these rules; or
2. satisfies the criteria for a temporary license (examination permit) specified by §2547 of these rules.

B. A work permit issued under this Subsection may not be extended or renewed beyond its initial term.

C. An applicant who is granted a 6-month temporary license (examination permit) under this Subchapter shall be ineligible for subsequent consideration for a temporary work permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 15:271 (April 1989), LR 17:480 (May 1991), LR 19:746 (June 1993), LR 25:2218 (November 1999), LR 38:58 (January 2012).

Subchapter F. Advisory Committee on Respiratory Care

§2549. Organization; Authority

A. The Advisory Committee on Respiratory Care (the "committee"), as established, appointed and organized pursuant to R.S. 37:3356 of the Act is hereby recognized by the board.

B. The committee shall:

1. have such authority as is accorded to it by the Act;
2. function and meet as prescribed by the Act;
3. monitor respiratory care education and training programs conducted in the state of Louisiana;
4. advise the board on issues affecting the licensing of respiratory therapists and regulation of respiratory care in the state of Louisiana;
5. provide advice and recommendations to the board respecting the modification, amendment and supplementation of rules and regulations, standards, policies and procedures respecting respiratory care licensure and practice;
6. serve as liaison between and among the board, licensed respiratory therapists, and professional organizations;
7. have authority to review and advise the board on requests for extension of temporary licenses (examination permits) and applications for license reinstatement;
8. conduct audits on applications to ensure satisfactory completion of continuing education and competency as specified by the board's rules;
9. perform such other functions and provide such additional advice and recommendations as may be requested by the board; and
10. receive reimbursement in the amount of fifty dollars per day for attendance at meetings of the advisory committee and other activities and expenses specifically authorized by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 19:747 (June 1993), amended LR 25:2219 (November 1999), LR 38:58 (January 2012).

§2551. Delegation of Authority

A. Authority is hereby delegated to the Advisory Committee on Respiratory Care to:

1. monitor all respiratory care education programs located in this state for the purpose of reporting and making recommendations to the board. To facilitate its responsibility committee may, among other items:
 - a. survey, by site visit or otherwise, programs and their affiliated hospitals, other institutions and associated clinical training sites;
 - b. request and obtain information from students, instructors, administrators or others associated with any hospital or clinical affiliate involved in such programs;
 - c. track enrollment, attrition, and retention statistics;
 - d. trend NBRC examination passage rates and scores; and
 - e. request information regarding examination passage and scores from the NBRC.
2. assist the board in the review of applicants' satisfaction of continuing professional education requirements for renewal of licensure under this Chapter.

B. To carry out its duties of §2551.A.2, the Advisory Committee is authorized to advise and assist the board in the review and approval of continuing professional education programs and licensee satisfaction of continuing professional education requirements for renewal of

licensure, as prescribed by Subchapter G of this Chapter, including the authority and responsibility to:

1. evaluate organizations and entities providing continuing professional education programs for all licensed respiratory therapists and provide recommendations to the board on approval of such organizations and entities as sponsors of qualifying continuing professional education programs and activities pursuant to §2559 of these rules;

2. request and obtain from continuing professional education sponsoring organizations any information necessary to properly evaluate and make informed recommendations to the board relative to the appropriateness of the educational program;

3. review renewal applications selected for audit of continuing professional education or referred by the board to verify the accuracy of documentation and make recommendations to the board with respect to whether programs and activities evidenced by applicants for renewal of licensure comply with and satisfy the standards prescribed by these rules; and

4. request and obtain from applicants for renewal of licensure, as well as those referred by the board, such additional information as the advisory committee may deem necessary or appropriate to enable it to make the evaluations and provide the recommendations for which the committee is responsible.

C. In discharging the functions authorized under this Section the advisory committee and the individual members thereof shall, when acting within the scope of such authority, be deemed agents of the board. All information obtained by the advisory committee members pursuant to this Subchapter shall be considered confidential. Advisory committee members are prohibited from communicating, disclosing or in any way releasing to anyone, other than the board, any information or documents obtained when acting as agents of the board without first obtaining written authorization from the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3351-3361, 37:1270(B)(6) and 37:3357.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 19:747 (June 1993), amended LR 22:1219 (December 1996), LR 25:2219 (November 1999), LR 38:58 (January 2012).

Subchapter G. Continuing Professional Education

§2553. Scope of Subchapter

A. The rules of this Subchapter provide standards for the continuing professional education requisite to the annual renewal of licensure as a licensed respiratory therapist, as required by §2543 and §2555 of these rules, and prescribe the procedures applicable to satisfaction and documentation of continuing professional education in connection with application for renewal of licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3357(D) and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1219 (December 1996), amended LR 25:2220 (November 1999), LR 38:59 (January 2012).

§2555. Continuing Professional Educational Requirement

A. Subject to the exceptions specified in §2569 of this Subchapter, to be eligible for renewal of licensure a respiratory therapists shall, within each year during which he

holds a license, evidence and document, upon forms or in another format acceptable to the board, the successful completion of not less than 10 contact hours of continuing professional education sanctioned by the American Association of Respiratory Care, the organizations identified in §2559 of these rules, or their successors, or the advisory committee.

B. For purposes of this Section, one contact hour of continuing professional education credit is equivalent to 50 minutes of qualifying lecture, laboratory practice, on-line course or workshop instruction on topics pertaining to the respiratory care profession.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3357(D) and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1219 (December 1996), amended LR 25:2220 (November 1999), LR 38:59 (January 2012).

§2557. Qualifying Continuing Professional Education Programs

A. To be acceptable as qualifying continuing professional education under these rules, a program shall:

1. have significant and substantial intellectual or practical content dealing principally with matters germane and relevant to the practice of respiratory care;

2. have pre-established written goals and objectives, with its primary objective being to maintain or increase the participant's competence in the practice of respiratory care;

3. be presented by persons whose knowledge and/or professional experience is appropriate and sufficient to the subject matter of the presentation and is up to date;

4. provide a system or method for verification of attendance or course completion;

5. be a minimum of 50 continuous minutes in length for each contact hour of credit; and

6. allow participants an opportunity to ask questions on the content presented.

B. Other approved continuing professional education activities include:

1. earning a grade of "C" or better in a college or university science course required to earn a degree in cardiopulmonary science or respiratory care, or a grade of "pass" in a pass/fail course. One credited semester hour will be deemed to equal 15 contact hours;

2. programs on advanced cardiac life support (ACLS), pediatric advanced life support (PALS) or neonatal advanced resuscitation program (NRP), or their successors, each of which will equal 5 contact hours;

3. any initial instructor course taken in preparation for teaching ACLS, PALS, NRP, or asthma educator (AE-C) or any other future instructor course sanctioned by the AARC, each of which will equal to 5 contact hours;

4. initial credentialing with the NBRC as a certified or registered respiratory therapist or another specialty examination administered by the NBRC, with each credential equal to 10 contact hours;

5. initial credentialing as a certified or registered cardiovascular technologist, asthma educator or other specialty credential granted by the NBRC, with each credential equal to 10 contact hours;

6. successful completion of any NBRC re-credentialing examination, with each such examination equal to 10 contact hours;

7. respiratory care-related lecture, seminar, workshop, home study, on-line, or correspondence courses approved by either the AARC or the advisory committee, pursuant to the criteria set forth in §2561 of these rules.

C. None of the following programs, seminars or activities shall be deemed to qualify as acceptable continuing professional education programs under these rules:

1. any program not meeting the standards prescribed by this Section;

2. any independent/home study correspondence, on-line, lecture, workshop, program or seminar that is not approved or sponsored by the AARC or the advisory committee pursuant to the criteria set forth in §2561 of these rules;

3. in-service education provided by a sales representative unless approved by AARC;

4. teaching, training or supervisory activities not specifically included in §2557.B;

5. holding office in professional or governmental organizations, agencies or committees;

6. participation in case conferences, informal presentations, or in service activities;

7. giving or authoring verbal or written presentations, seminars or articles or grant applications;

8. passing basic life support (BCLS); and

9. any program, presentation, seminar, or course not providing the participant an opportunity to ask questions or seek clarification of matters pertaining to the content presented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3357(D) and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1220 (December 1996), amended LR 25:2220 (November 1999), LR 38:59 (January 2012).

§2559. Approval of Program Sponsors

A. Any program, course, seminar, workshop or other activity meeting the standards prescribed by §2557 shall be deemed approved for purposes of satisfying continuing education requirements under this Subchapter, if sponsored or offered by one of the following organizations: the American Association for Respiratory Care (AARC), the Louisiana Society for Respiratory Care (LSRC), the American Lung Association (ALA), the American Heart Association (AHA), the American Academy of Pediatrics (AAP), the American College of Chest Physicians (ACCP), the American Thoracic Society (ATS), the Louisiana Department of Health and Hospitals (DHH), the Louisiana Hospital Association (LHA), or the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

B. Upon the recommendation of the advisory committee, or on its own motion, the board may designate additional organizations and entities whose programs, courses, seminars, workshops, or other activities shall be deemed approved by the board for purposes of qualifying as an approved continuing professional education program under §2557 or §2559.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3357(D) and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1220

(December 1996), amended LR 25:2221 (November 1999), LR 38:60 (January 2012).

§2561. Approval of Program

A. A continuing professional education program or activity sponsored by an organization or entity that is not approved by the board pursuant to §2557 or 2559 must be evaluated and approved by the advisory committee in order to be accepted for purposes of meeting the continuing professional education requirement for annual renewal of licensure. To be considered for approval the sponsoring organization or entity shall submit a written request to the board. For each continuing professional educational program presented for consideration the following shall be provided:

1. a list of course goals and objectives for each topic;

2. a course agenda displaying the lecture time for each topic;

3. a curriculum vitae for each speaker;

4. information on the location, date(s), and target audience;

5. a copy of the evaluation form used for the overall program topics and speakers; and

6. such other information as the advisory committee may request to establish the compliance of such program with the standards prescribed by §2557 or 2559.

B. A request for pre-approval of a continuing professional education program shall be submitted in a format approved by the board not less than 60 days in advance of the event. Any such request for pre-approval respecting a program which makes and collects a charge for attendance shall be accompanied by a nonrefundable processing fee of \$30.

C. Any such written request shall be referred by the board to the advisory committee for evaluation and approval.

D. If the recommendation is against the approval, the board or the advisory committee shall give notice of such recommendation to the person or organization requesting approval. An appeal may be submitted to the board by written request, accompanied by all information required by Subsection A of this Section within 10 days of such notice. The board's decision with respect to approval of any such activity shall be final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3357(D) and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1221 (December 1996), amended LR 25:2221 (November 1999), LR 38:60 January 2012).

§2563. Documentation Procedure

A. Annual documentation and certification of satisfaction of the continuing professional education requirements prescribed by these rules shall accompany a licensed respiratory therapist's application for renewal of licensure pursuant to §2543 of these rules.

B. A licensed respiratory therapist shall maintain a record or certificate of attendance for at least four years from the date of completion of the continuing professional education program.

C. The board or advisory committee shall randomly select for audit no fewer than 3 percent of the licensees each year for an audit of continuing education activities. In addition, the board or advisory committee has the right to audit any questionable documentation of activities.

Verification shall be submitted within 30 days of the notification of audit. A licensee's failure to notify the board of a change of mailing address will not absolve the licensee from the audit requirement.

D. Any certification of continuing professional education not presumptively approved in writing by the board, pursuant to §2557 or 2559 of these rules, or pre-approved by the advisory committee, pursuant to §2561, shall be referred to the advisory committee for its evaluation and recommendations prior to licensure denial or renewal.

E. If the advisory committee determines that a continuing professional education program or activity listed by an applicant for renewal does not qualify for recognition by the board or does not qualify for the number of contact hours claimed by the applicant, the board shall give notice of such determination to the applicant. An applicant may appeal the advisory committee's recommendation to the board by written request delivered to the board within 10 days of such notice. The board's decision with respect to approval and recognition of such program or activity shall be final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3357(D) and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1221 (December 1996), amended LR 25:2222 (November 1999), LR 38:60 (January 2012).

§2565. Failure to Satisfy Continuing Professional Education Requirements

A. An applicant for renewal of licensure who fails to evidence satisfaction of the continuing professional education requirements prescribed by these rules shall be given written notice of such failure by the board. The license of the applicant shall remain in full force and effect for a period of 90 days following the mailing of such notice, following which it shall be deemed expired, unrenewed and subject to suspension or revocation without further notice, unless the applicant shall have, within such 90 days, furnished the board satisfactory evidence by affidavit that:

1. the applicant has satisfied the applicable continuing professional education requirements;
2. the applicant is exempt from such requirements pursuant to these rules; or
3. the applicant's failure to satisfy the continuing professional education requirements was occasioned by disability, illness or other good cause as may be determined by the board pursuant to §2567.

B. The license of a licensed respiratory therapist whose license has expired by nonrenewal or has been suspended or revoked for failure to satisfy the continuing professional education requirements of this Subchapter may be reinstated by the board upon application to the board pursuant to §2545 of this Chapter, accompanied by payment of a reinstatement fee, together with documentation and certification that the applicant has, for each calendar year since the date on which the applicant's license lapsed, expired, or was suspended or revoked, completed an aggregate of 10 contact hours of qualifying continuing professional education.

C. Any licensee who falsely certifies attendance and/or completion of the required continuing education requirement will be subject to disciplinary action by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3357(D) and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1221 (December 1996), amended LR 24:1502 (August 1998), LR 25:2222 (November 1999), LR 38:61 (January 2012).

§2567. Waiver of Requirements

A. The board may, in its discretion upon the recommendation of the advisory committee, waive all or part of the continuing professional education required by these rules in favor of a respiratory therapist who makes a written request for such waiver to the board and evidences to its satisfaction a permanent physical disability, illness, financial hardship or other similar extenuating circumstances precluding the individual's satisfaction of the continuing professional education requirement. Any licensed respiratory therapist submitting a continuing professional education waiver request is required to do so on or before the date specified for the renewal of the licensee's license by §2543. Any request received by the board past the date for licensure renewal will not be considered for waiver but, rather, in accordance with the provisions of §2565.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3357(D) and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1222 (December 1996), amended LR 25:2222 (November 1999), LR 38:61 (January 2012).

§2569. Exceptions to the Continuing Professional Education Requirements

A. The continuing professional education requirements prescribed by this Subchapter for renewal of licensure shall not be applicable to:

1. a respiratory therapist employed exclusively by, or at an institution operated by the United States Government; or
2. a respiratory therapist who has within the twelve months prior to the date of renewal, been credentialed or recredentialed by the NBRC on the basis of examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3357(D) and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1222 (December 1996), amended LR 25:2222 (November 1999), LR 38:61 (January 2012).

Subchapter H. Supervision of Students

§2571. Scope of Subchapter [Formerly §5511]

A. The rules of this Subchapter prescribe certain restrictions on and requirements for supervision of students enrolled in a respiratory care education program as that term is defined in these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), repromulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2224 (November 1999), LR 38:61 (January 2012).

§2573. Student Participation in Clinical Training

A. A student or trainee providing respiratory care to patients as permitted by R.S. 37:3361(3) in the course of a student's clinical training shall:

1. be supervised in accordance with the provisions of §2575 of this Subchapter;

2. be identified to patients and licensed practitioners by title or otherwise which clearly designates the student's status as a student or trainee; and

3. not be compensated monetarily for services rendered during their education processes for cardiopulmonary clinical experiences.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 38:61 (January 2012).

§2575. Supervision of Student [Formerly §5515]

A. A person pursuing a course of study leading to certification or registry in respiratory care shall engage in the practice of respiratory care only under the supervision of a licensed respiratory therapist or a physician who actively practices respiratory care, as provided in this Section.

B. A licensed respiratory therapist or a physician who undertakes to supervise a student shall:

1. undertake to concurrently supervise not more than four students;

2. personally evaluate every patient prior to the provision of any respiratory care treatment or procedure by a student;

3. assign to a student only such respiratory care measures, treatments, procedures and functions as such licensed respiratory therapist or physician has documented that the student by education and training is capable of performing safely and effectively;

4. provide continuous and immediate on-premises direction to and supervision of a student and be readily available at all times to provide advice, instruction, and assistance to the student and to the patient during respiratory care treatment given by a student;

5. not permit a student to perform any invasive procedure or any life-sustaining or critical respiratory care, including therapeutic, diagnostic or palliative procedures, except under the direct and immediate supervision, and in the physical presence of, the supervising therapist and/or physician; and

6. provide and perform periodic evaluation of every patient administered to by a student and make modifications and adjustments in the patient's respiratory care treatment plan, including those portions of the treatment plan assigned to the student.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 19:748 (June 1993), LR 25:2224 (November 1999), LR 38:62 (January 2012).

Subpart 3. Practice

Chapter 55. Respiratory Therapists

Subchapter A. General Provisions

§5501. Scope of Chapter

A. The rules of this Chapter govern the practice of respiratory care in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR

12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2223 (November 1999), LR 38:62 (January 2012).

§5503. General Definitions

A. The definitions set forth in Chapter 25 of these rules shall equally apply to this Chapter, unless the context clearly states otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 19:747 (June 1993), LR 25:2223 (November 1999), LR 38:62 (January 2012).

Subchapter B. Unauthorized Practice, Exemptions, and Prohibitions

§5505. Unauthorized Practice

A. No person shall engage in the practice of respiratory care in the state of Louisiana unless he has in his possession a current license, a temporary license (examination permit), or a temporary work permit duly issued by the board under Subpart 2 of these rules.

B. No person shall hold himself out to the public, an individual patient, a physician, dentist or podiatrist, or to any insurer or indemnity company or association or governmental authority, nor shall he directly or indirectly identify or designate himself as a licensed respiratory therapist, nor use in connection with his name the letters "LRT" or any other words, letters, abbreviations, insignia, or signs tending to indicate or imply that the person is licensed to practice respiratory therapy in this state, or that the services provided by such person constitute respiratory care, unless such person possesses a current license, a temporary license (examination permit), or a temporary work permit duly issued by the board under Subpart 2 of these rules.

C. A licensed respiratory therapist who is currently certified or registered by and in good standing with the NBRC may identify such credentials with his name or title "Licensed Respiratory Therapist-Certified" or "Licensed Respiratory Therapist-Registered" or the letters "LRT-C" or "LRT-R," respectively.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2224 (November 1999), LR 38:62 (January 2012).

§5507. Exemptions

A. The prohibitions of §5505A of this Chapter shall not apply to a person:

1. employed exclusively by, or at an institution operated by the United States Government when acting within the course and scope of such employment;

2. acting under and within the scope of a license issued by another licensing agency of the state of Louisiana;

3. enrolled in a respiratory care education program and who is designated by a title which clearly indicates his status as a student; or

4. not licensed as a respiratory therapist in accordance with the provisions of these rules but who is employed in a pulmonary laboratory or physician's office to administer treatment confined to that laboratory or office under the

direction and immediate supervision of a licensed physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended, by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2224 (November 1999), LR 38:62 (January 2012).

§5509. Prohibitions

A. A licensed respiratory therapist shall not:

1. undertake to perform or actually perform any activities described in §2503 of these rules, definition of "Respiratory therapy," except upon a prescription or other order of a physician, advanced registered nurse or physician assistant;

2. administer any drugs or medications except as dispensed by a pharmacist and prescribed by a physician, advanced practice registered nurse or physician assistant; or

3. perform any surgical incisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2224 (November 1999), LR 38:63 (January 2012).

Subchapter C. Grounds for Administrative Action

§5517. Causes for Administrative Action

A. The board may deny, refuse to issue, renew, or reinstate, or may suspend, revoke or impose probationary conditions and restrictions on the license, temporary license (examination permit), or temporary work permit of any respiratory therapist if the licensee or applicant for license has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:886 (September 1991), LR 25:2225 (November 1999), LR 38:63 (January 2012).

§5519. Causes for Action; Definitions; Unprofessional Conduct

A. As used herein, the term *unprofessional conduct* by a respiratory therapist or applicant shall mean any of the causes set forth in R.S. 37:3358 of the Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:886 (September 1991), LR 25:2225 (November 1999), LR 38:63 (January 2012).

Robert L. Marier, M.D.
Executive Director

1201#081

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Home and Community-Based Services Providers Minimum Licensing Standards (LAC 48:I.Chapter 50)

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted LAC 48:I.Chapter 50 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2120.2. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 48

PUBLIC HEALTH—GENERAL

Part 1. General Administration

Subpart 3. Licensing and Certification

Chapter 50. Home and Community-Based Services Providers Licensing Standards

Subchapter A. General Provisions

§5001. Introduction

A. Pursuant to R.S. 40:2120.2, the Department of Health and Hospitals hereby establishes the minimum licensing standards for home and community-based services (HCBS) providers. These licensing provisions contain the core requirements for HCBS providers as well as the module-specific requirements, depending upon the services rendered by the HCBS provider. These regulations are separate and apart from Medicaid standards of participation or any other requirements established by the Medicaid Program for reimbursement purposes.

B. Any person or entity applying for an HCBS provider license or who is operating as a provider of home and community-based services shall meet all of the core licensing requirements contained in this Chapter, as well as the module-specific requirements, unless otherwise specifically noted within these provisions.

C. Providers of the following services shall be licensed under the HCBS license:

1. adult day care (ADC);
2. family support;
3. personal care attendant (PCA);
4. respite;
5. substitute family care (SFC);
6. supervised independent living (SIL), including the shared living conversion services in a waiver home; and
7. supported employment.

D. The following entities shall be exempt from the licensure requirements for HCBS providers:

1. any person, agency, institution, society, corporation, or group that solely:
 - a. prepares and delivers meals;
 - b. provides sitter services; or
 - c. provides housekeeping services;
2. any person, agency, institution, society, corporation, or group that provides gratuitous home and community-based services;

3. any individual licensed practical nurse (LPN) or registered nurse (RN) who has a current Louisiana license in good standing;

4. staffing agencies that supply contract workers to a health care provider licensed by the department; and

5. any person who is employed as part of a departmentally authorized self-direction program;

a. For purposes of these provisions, a self-direction program shall be defined as a service delivery option based upon the principle of self-determination. The program enables participants and/or their authorized representative(s) to become the employer of the people they choose to hire to provide supports to them.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:63 (January 2012).

§5003. Definitions

Accredited—the process of review and acceptance by an accreditation body such as the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the Commission on Accreditation of Rehabilitation Facilities (CARF) or Council on Accreditation (COA).

Activities of Daily Living—the functions or tasks which are performed either independently or with supervision that assist an individual to live in a community setting, or that provide assistance for mobility (i.e., bathing, dressing, eating, grooming, walking, transferring and toileting).

Adult Day Care Services—structured and comprehensive services provided in a group setting that are designed to meet the individual needs of adults with functional impairments. This program provides a variety of health, social and related support services in a protective setting for a portion of a 24-hour day.

Branch—an office from which in-home services such as personal care attendant (PCA), supervised independent living (SIL) and respite are provided within the same DHH region served by the parent agency. The branch office shares administration and supervision.

Client—an individual who is receiving services from a home and community-based service provider.

Department—the Louisiana Department of Health and Hospitals (DHH) or any of its sections, bureaus, offices or its contracted designee.

DHH Region—the geographical administrative regions designated by the Department of Health and Hospitals.

Developmental Disability—a severe, chronic condition as defined in the Developmental Disabilities Law of 2005, R.S. 28:451.1-455.2.

Family Support Services—advocacy services, family counseling, including genetic counseling, family subsidy programs, parent-to-parent outreach, legal assistance, income maintenance, parent training, homemaker services, minor home renovations, marriage and family education, and other related programs.

Geographical Location—the DHH region in which the primary business location of the provider agency operates from.

Health Standards Section—the licensing and certification section of the Department of Health and Hospitals.

Home and Community-Based Service Provider—an agency, institution, society, corporation, person(s) or any other group licensed by the department to provide one or more home and community-based services as defined in R.S. 40:2120.2 or these licensing provisions.

Incident—a death, serious illness, allegation of abuse, neglect or exploitation or an event involving law enforcement or behavioral event which causes serious injury to the client or others.

Individual Service Plan—a service plan developed for each client that is based on a comprehensive assessment which identifies the individual's strengths and needs in order to establish goals and objectives so that outcomes to service delivery can be measured.

Instrumental Activities of Daily Living—the functions or tasks that are not necessary for fundamental functioning but assist an individual to be able to live in a community setting. These are activities such as light house-keeping, food preparation and storage, grocery shopping, laundry, reminders to take medication, scheduling medical appointments, arranging transportation to medical appointments and accompanying the client to medical appointments.

Personal Care Attendant Services—services required for a person with a disability to become physically independent to maintain physical function or to remain in, or return to, the community.

Respite Care—an intermittent service designed to provide temporary relief to unpaid, informal caregivers of the elderly and/or people with disabilities.

Satellite—an alternate location from which center-based respite or adult day care services are provided within the same DHH region served by the parent agency. The branch office shares administration and supervision.

Service Area—the DHH administrative region in which the provider's geographic business location is located and for which the license is issued.

Sub-License—any satellite or branch office operating at a different physical geographic address.

Substitute Family Care Caregiver—a single or dual parent family living in a home setting which has been certified through a home study assessment as adequate and appropriate to provide care to the client by the SFC provider. At least one family member will be designated as a principal SFC caregiver.

Substitute Family Care Services—provide 24-hour personal care, supportive services and supervision to adults who meet the criteria for having a developmental disability.

Supervised Independent Living via a Shared Living Conversion Model—a home and community-based shared living model for up to six persons, chosen by clients of the Residential Options Waiver (ROW), or any successor waiver, as their living option.

Supervised Independent Living Services—necessary training, social skills and medical services to enable a person who has mental illness or a developmental disability, and who is living in congregate, individual homes or individual apartments, to live as independently as possible in the community.

Supported Employment—a system of supports for people with disabilities in regards to ongoing employment in

integrated settings. Supported employment can provide assistance in a variety of areas including:

1. job development;
2. job coaches;
3. job retention;
4. transportation;
5. assistive technology;
6. specialized job training; and
7. individually tailored supervision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:64 (January 2012).

§5005. Licensure Requirements

A. All HCBS providers shall be licensed by the Department of Health and Hospitals. It shall be unlawful to operate as a home and community-based service provider without a license issued by the department. DHH is the only licensing authority for HCBS providers in Louisiana.

B. An HCBS license shall:

1. be issued only to the person or entity named in the license application;
2. be valid only for the HCBS provider to which it is issued and only for the specific geographic address of that provider, including any sub-license;
3. designate which home and community-based services the provider can provide;
4. enable the provider to render delineated home and community-based services within a DHH region;
5. be valid for one year from the date of issuance, unless revoked, suspended, modified or terminated prior to that date, or unless a provisional license is issued;
6. expire on the last day of the twelfth month after the date of issuance, unless timely renewed by the HCBS provider;
7. not be subject to sale, assignment, donation or other transfer, whether voluntary or involuntary; and
8. be posted in a conspicuous place on the licensed premises at all times.

C. An HCBS provider shall provide only those home and community-based services or modules specified on its license and only to clients residing in the provider's designated service area, DHH Region or at the provider's licensed location.

D. An HCBS provider may apply for a waiver from the Health Standards Section (HSS) to provide services to a client residing outside of the provider's designated service area or DHH Region only under the following condition:

1. A waiver may be granted by the department if there is no other HCBS provider in the client's service area or DHH Region that is licensed and that has the capacity to provide the required services to the client, or for other good cause shown by the HCBS provider and client.
2. The provider must submit a written waiver request to HSS prior to providing services to the client residing outside of the designated service area or DHH Region.
3. The written waiver request shall be specific to one client and shall include the reasons for which the waiver is requested.

E. In order for the HCBS provider to be considered operational and retain licensed status, the provider shall meet the following conditions.

1. Each HCBS provider shall have a business location which shall not be located in an occupied personal residence and shall conform to the provisions of §5027 of this Chapter.

a. The business location shall be part of the licensed location of the HCBS provider and shall be in the DHH Region for which the license is issued.

b. The business location shall have at least one employee on duty at the business location during stated hours of operation.

c. An HCBS provider which provides ADC services or out of home (center-based) respite care services may have the business location at the ADC building or center-based respite building.

2. Adult day care facilities shall have clearly defined days and hours of operation posted. The ADC must be open at least five hours on days of operation. Center-based respite facilities shall have the capacity to provide 24 hour services.

3. There shall be adequate direct care staff and professional services staff employed and available to be assigned to provide services to persons in their homes as per the plan of care. ADC services and center-based respite services should be adequately staffed during the facility's hours of operation.

4. Each HCBS provider shall have at least one published business telephone number. Calls shall be returned within one business day.

F. The licensed HCBS provider shall abide by and adhere to any state law, rule, policy, procedure, manual or memorandum pertaining to HCBS providers.

G. A separately licensed HCBS provider shall not use a name which is substantially the same as the name of another HCBS provider licensed by the department. An HCBS provider shall not use a name which is likely to mislead the client or family into believing it is owned, endorsed or operated by the State of Louisiana.

H. Upon promulgation of the final Rule governing these provisions, existing providers of the following home and community-based services shall be required to apply for an HCBS provider license at the time of renewal of their current license(s):

1. adult day care;
2. family support;
3. personal care attendant;
4. respite;
5. supervised independent living; and
6. supported employment.

I. If an existing provider currently has multiple licenses, such as PCA, respite and SIL, the provider shall be required to apply for an HCBS provider license at the time the first such license is due for renewal. The HCBS provider license shall include all modules for which the provider is currently licensed, and will replace all of the separate licenses.

J. If applicable, each HCBS provider shall obtain facility need review approval prior to licensing.

1. An existing licensed PCA, respite or SIL provider who is applying for an HCBS provider license at the time of license renewal shall not be required to apply for facility need review approval. However, if an existing licensed provider, who is not currently providing PCA, respite or SIL services wants to begin providing these services, the provider shall be required to apply for facility need review approval for each of the requested services.

EXAMPLE: A currently licensed PCA provider with no Respite license is now applying for his HCBS provider license and wants to add the respite module. The PCA provider shall be required to apply for facility need review approval for the respite module.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:65 (January 2012).

§5007. Initial Licensure Application Process

A. An initial application for licensing as an HCBS provider shall be obtained from the department. A completed initial license application packet for an HCBS provider shall be submitted to and approved by the department prior to an applicant providing HCBS services.

B. The initial licensing application packet shall include:

1. a completed HCBS licensure application and the non-refundable licensing fee as established by statute;

2. a copy of the approval letter of the architectural facility plans for the adult day care module and the center-based respite module from the Office of the State Fire Marshal and any other office/entity designated by the department to review and approve the facility's architectural plans;

3. a copy of the on-site inspection report with approval for occupancy by the Office of the State Fire Marshal, if applicable;

4. a copy of the health inspection report with approval of occupancy from the Office of Public Health for the adult day care module and the center-based respite module;

5. a copy of a statewide criminal background check, including sex offender registry status, on all owners and administrators;

6. proof of financial viability, comprised of the following:

a. a line of credit issued from a federally insured, licensed lending institution in the amount of at least \$50,000;

b. general and professional liability insurance of at least \$300,000; and

c. worker's compensation insurance;

7. a completed disclosure of ownership and control information form;

8. the days and hours of operation;

9. an organizational chart and names, including position titles, of key administrative personnel and governing body; and

10. any other documentation or information required by the department for licensure.

C. Any person convicted of one of the following felonies is prohibited from being the owner or the administrator of an HCBS provider agency. For purposes of these provisions, the licensing application shall be rejected by the department for any felony conviction relating to:

1. the violence, abuse, or negligence of a person;

2. the misappropriation of property belonging to another person;

3. cruelty, exploitation or the sexual battery of the infirmed;

4. a drug offense;

5. crimes of a sexual nature;

6. a firearm or deadly weapon;

7. Medicare or Medicaid fraud; or

8. fraud or misappropriation of federal or state funds.

D. If the initial licensing packet is incomplete, the applicant shall be notified of the missing information and shall have 90 days from receipt of the notification to submit the additional requested information.

1. If the additional requested information is not submitted to the department within 90 days, the application shall be closed.

2. If an initial licensing application is closed, an applicant who is still interested in becoming an HCBS provider must submit a new initial licensing packet with a new initial licensing fee to start the initial licensing process, subject to any facility need review approval.

E. Applicants for HCBS licensure shall be required to attend a mandatory training class when a completed initial licensing application packet has been received by the department.

F. Upon completion of the mandatory training class and written notification of satisfactory class completion from the department, an HCBS applicant shall be required to admit one client and contact the HSS field office to schedule an initial licensing survey.

1. Prior to scheduling the initial survey, applicants must be:

a. fully operational;

b. in compliance with all licensing standards; and

c. providing care to only one client at the time of the initial survey.

2. If the applicant has not admitted one client or called the field office to schedule a survey within 30 days of receipt of the written notification from the department, the application will be closed. If an applicant is still interested in becoming an HCBS provider, a new initial licensing packet with a new initial licensing fee must be submitted to the department to start the initial licensing process, subject to any facility need review approval.

G. Applicants must be in compliance with all appropriate federal, state, departmental or local statutes, laws, ordinances, rules, regulations and fees before the HCBS provider will be issued an initial license to operate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:66 (January 2012).

§5009. Initial Licensing Surveys

A. Prior to the initial license being issued, an initial on-site licensing survey shall be conducted to ensure compliance with the licensing laws and standards.

B. In the event that the initial licensing survey finds that the HCBS provider is compliant with all licensing laws, regulations and other required statutes, laws, ordinances, rules, regulations, and fees, the department shall issue a full license to the provider. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, suspended or terminated.

C. In the event that the initial licensing survey finds that the HCBS provider is noncompliant with any licensing laws or regulations, or any other required rules or regulations that present a potential threat to the health, safety, or welfare of the clients, the department shall deny the initial license.

D. In the event that the initial licensing survey finds that the HCBS provider is noncompliant with any licensing laws

or regulations, or any other required rules or regulations, but the department in its sole discretion determines that the noncompliance does not present a threat to the health, safety or welfare of the clients, the department may issue a provisional initial license for a period not to exceed six months. The provider shall submit a plan of correction to the department for approval, and the provider shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional license.

1. If all such noncompliance or deficiencies are corrected on the follow-up survey, a full license will be issued.

2. If all such noncompliance or deficiencies are not corrected on the follow-up survey, or new deficiencies affecting the health, safety or welfare of a client are cited, the provisional license will expire and the provider shall be required to begin the initial licensing process again by submitting a new initial license application packet and the appropriate licensing fee.

E. The initial licensing survey of an HCBS provider shall be an announced survey. Follow-up surveys to the initial licensing surveys are unannounced surveys.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:66 (January 2012).

§5011. Types of Licenses and Expiration Dates

A. The department shall have the authority to issue the following types of licenses:

1. Full Initial License. The department shall issue a full license to the HCBS provider when the initial licensing survey finds that the provider is compliant with all licensing laws and regulations, and is compliant with all other required statutes, laws, ordinances, rules, regulations, and fees. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, suspended, or terminated.

2. Provisional Initial License. The department may issue a provisional initial license to the HCBS provider when the initial licensing survey finds that the HCBS provider is noncompliant with any licensing laws or regulations or any other required statutes, laws, ordinances, rules, regulations or fees, but the department determines that the noncompliance does not present a threat to the health, safety or welfare of the clients.

3. Full Renewal License. The department may issue a full renewal license to an existing licensed HCBS provider who is in substantial compliance with all applicable federal, state, departmental, and local statutes, laws, ordinances, rules, regulations and fees. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, suspended, or terminated.

B. The department, in its sole discretion, may issue a provisional license to an existing licensed HCBS provider for a period not to exceed six months. The department will consider the following circumstances in making a determination to issue a provisional license:

1. compliance history of the provider to include the scope and severity of deficiencies cited;

2. the number and nature of validated complaints:

a. A validated complaint is a complaint received by the Health Standards Section and found to be substantiated;

3. the existing HCBS provider has been issued a deficiency that involved placing a client at risk for serious harm or death;

4. the existing HCBS provider has failed to correct deficient practices within 60 days of being cited for such deficient practices or at the time of a follow-up survey; or

5. the existing HCBS provider is not in substantial compliance with all applicable federal, state, departmental and local statutes, laws, ordinances, rules regulations and fees at the time of renewal of the license.

C. When the department issues a provisional license to an existing licensed HCBS provider, the provider shall submit a plan of correction to DHH for approval, and the provider shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional license. The department shall conduct a follow-up survey, either on-site or by desk review, of the HCBS provider prior to the expiration of the provisional license.

1. If the follow-up survey determines that the HCBS provider has corrected the deficient practices and has maintained compliance during the period of the provisional license, the department may issue a full license for the remainder of the year until the anniversary date of the HCBS license.

2. If the follow-up survey determines that all non-compliance or deficiencies have not been corrected, or if new deficiencies that are a threat to the health, safety or welfare of a client are cited on the follow-up survey, the provisional license shall expire.

3. The department shall issue written notice to the provider of the results of the follow-up survey.

D. If an existing licensed HCBS provider has been issued a notice of license revocation or termination, and the provider's license is due for annual renewal, the department shall deny the license renewal application and shall not issue a renewal license.

1. If a timely administrative appeal has been filed by the provider regarding the license revocation, suspension, or termination, the administrative appeal shall be suspensive, and the provider shall be allowed to continue to operate and provide services until such time as the administrative tribunal or department issues a decision on the license revocation, suspension, or termination.

2. If the secretary of the department determines that the violations of the HCBS provider pose an imminent or immediate threat to the health, welfare, or safety of a client, the imposition of such action may be immediate and may be enforced during the pendency of the administrative appeal. If the secretary of the department makes such a determination, the HCBS provider will be notified in writing.

3. The denial of the license renewal application does not affect in any manner the license revocation, suspension, or termination.

E. The renewal of a license does not in any manner affect any sanction, civil monetary penalty or other action imposed by the department against the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:67 January 2012).

§5013. Changes in Licensee Information or Personnel

A. An HCBS license shall be valid only for the person or entity named in the license application and only for the specific geographic address listed on the license application.

B. Any change regarding the HCBS provider's entity name, "doing business as" name, mailing address, telephone number or any combination thereof, shall be reported in writing to the Health Standards Section within five working days of the change.

C. Any change regarding the HCBS provider's key administrative personnel shall be reported in writing to the Health Standards Section within 10 working days subsequent to the change.

1. Key administrative personnel include the:

- a. administrator;
- b. director of nursing, if applicable; and
- c. medical director, if applicable.

2. The HCBS provider's notice to the department shall include the individual's:

- a. name;
- b. address;
- c. hire date; and
- d. qualifications.

D. A change of ownership (CHOW) of the HCBS provider shall be reported in writing to the department within five working days subsequent to the change. The license of an HCBS provider is not transferable or assignable and cannot be sold. The new owner shall submit the legal CHOW document, all documents required for a new license and the applicable licensing fee. Once all application requirements are completed and approved by the department, a new license shall be issued to the new owner.

1. An HCBS provider that is under license revocation may not undergo a CHOW.

2. If the CHOW results in a change of geographic address, an on-site survey may be required prior to issuance of the new license.

E. If the HCBS provider changes its name without a change in ownership, the HCBS provider shall report such change to the department in writing five days prior to the change. The change in the HCBS provider name requires a change in the HCBS provider license. Payment of the applicable fee is required to re-issue the license.

F. Any request for a duplicate license shall be accompanied by the applicable fee.

G. If the HCBS provider changes the physical address of its geographic location without a change in ownership, the HCBS provider shall report such change to DHH in writing at least five days prior to the change. Because the license of an HCBS provider is valid only for the geographic location of that provider, and is not transferrable or assignable, the provider shall submit a new licensing application.

1. An on-site survey may be required prior to the issuance of the new license.

2. The change in the HCBS provider's physical address results in a new anniversary date and the full licensing fee must be paid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:68 (January 2012).

§5015. Renewal of License

A. The HCBS provider shall submit a completed license renewal application packet to the department at least 30 days prior to the expiration of the current license. The license renewal application packet shall include:

1. the license renewal application;
2. the days and hours of operation;
3. a current State Fire Marshal report, if applicable;
4. a current Office of Public Health inspection report for the adult day care module and the center-based respite module;
5. the non-refundable license renewal fee;
6. any other documentation required by the department; and
7. proof of financial viability, comprised of the following:

- a. a line of credit issued from a federally insured, licensed lending institution in the amount of at least \$50,000;
- b. general and professional liability insurance of at least \$300,000; and
- c. worker's compensation insurance.

B. The department may perform an on-site survey and inspection upon annual renewal of a license.

C. Failure to submit a completed license renewal application packet prior to the expiration of the current license will result in the voluntary non-renewal of the HCBS license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:68 (January 2012).

§5016. Deemed Status through Accreditation

A. An HCBS provider may request deemed status from the department. The department may accept accreditation in lieu of a routine on-site resurvey provided that:

1. the accreditation is obtained through an organization approved by the department;
2. all services provided under the HCBS license must be accredited; and
3. the provider forwards the accrediting body's findings to the Health Standards Section within 30 days of its accreditation.

B. The accreditation will be accepted as evidence of satisfactory compliance with all provisions of these requirements.

C. The following set of circumstances can cause the state agency to perform a full licensing survey on an accredited HCBS provider:

1. any valid complaints in the preceding 12-month period;
2. addition of services;
3. a change of ownership in the preceding 12-month period;
4. issuance of a provisions license in the preceding 12-month period;

5. serious violations of licensing standards or professional standards of practice that were identified in the preceding 12-month period; or

6. reports of inappropriate treatment or service resulting in death or serious injury.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:68 (January 2012).

§5017. Survey Activities

A. The department, or its designee, may conduct periodic licensing surveys and other surveys as deemed necessary to ensure compliance with all laws, rules and regulations governing HCBS providers and to ensure client health, safety and welfare. These surveys may be conducted on-site or by administrative review and shall be unannounced.

B. The department shall also conduct complaint surveys. The complaint surveys shall be conducted in accordance with R.S. 40:2009.13 et seq.

C. The department shall require an acceptable plan of correction from a provider for any survey where deficiencies have been cited, regardless of whether the department takes other action against the facility for the deficiencies cited in the survey. The acceptable plan of correction shall be approved by the department.

D. A follow-up survey may be conducted for any survey where deficiencies have been cited to ensure correction of the deficient practices.

E. The department may issue appropriate sanctions for noncompliance, deficiencies and violations of law, rules and regulations. Sanctions include, but are not limited to:

1. civil monetary penalties;
2. directed plans of correction; and
3. license revocation.

F. DHH surveyors and staff shall be:

1. given access to all areas of the provider agency, as necessary, and all relevant files during any survey; and
2. allowed to interview any provider staff, client or other persons as necessary or required to conduct the survey.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:69 (January 2012).

§5019. Statement of Deficiencies

A. The following statements of deficiencies issued by the department to the HCBS provider shall be posted in a conspicuous place on the licensed premises:

1. the most recent annual survey statement of deficiencies; and
2. any subsequent complaint survey statement of deficiencies.

B. Any statement of deficiencies issued by the department to an HCBS provider shall be available for disclosure to the public 30 days after the provider submits an acceptable plan of correction to the deficiencies or 90 days after the statement of deficiencies is issued to the provider, whichever occurs first.

C. Unless otherwise provided in statute or in these licensing provisions, a provider shall have the right to an informal reconsideration of any deficiencies cited as a result of a survey or investigation.

1. Correction of the violation, noncompliance or deficiency shall not be the basis for the reconsideration.

2. The informal reconsideration of the deficiencies shall be requested in writing within 10 days of receipt of the statement of deficiencies, unless otherwise provided in these standards.

3. The request for informal reconsideration of the deficiencies shall be made to the department's Health Standards Section and will be considered timely if received by HSS within 10 days of the provider's receipt of the statement deficiencies.

4. If a timely request for an informal reconsideration is received, the department shall schedule and conduct the informal reconsideration.

5. The provider shall be notified in writing of the results of the informal reconsideration.

6. Except as provided for complaint surveys pursuant to R.S. 40:2009.13 et seq., and as provided in these licensing provisions for license denials, revocations and non-renewals, the decision of the informal reconsideration team shall be the final administrative decision regarding the deficiencies.

a. There is no administrative appeal right of such deficiencies.

7. Pursuant to R.S. 40:2009.13 et seq., for complaint surveys in which the Health Standards Section determines that the complaint involves issues that have resulted in or are likely to result in serious harm or death, as defined in the statute, the determination of the informal reconsideration may be appealed administratively to the Division of Administrative Law or its successor. The hearing before the Division of Administrative Law, or its successor, is limited only to whether the investigation or complaint survey was conducted properly or improperly. The Division of Administrative Law shall not delete or remove deficiencies as a result of such hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:69 (January 2012).

§5021. Denial of License, Revocation of License, Denial of License Renewal

A. The department may deny an application for an initial license or a license renewal, or may revoke a license in accordance with the provisions of the Administrative Procedure Act. These actions may be taken against the entire license or certain modules of the license.

B. Denial of an Initial License

1. The department shall deny an initial license in the event that the initial licensing survey finds that the HCBS provider is noncompliant with any licensing laws or regulations, or any other required statutes or regulations that present a potential threat to the health, safety or welfare of the clients.

2. The department shall deny an initial license for any of the reasons a license may be revoked or non-renewed pursuant to these licensing provisions.

3. If the department denies an initial license, the applicant for an HCBS provider license shall discharge the client receiving services.

C. Voluntary Non-Renewal of a License. If a provider fails to timely renew its license, the license expires on its

face and is considered voluntarily surrendered. There are no appeal rights for such surrender or non-renewal of the license, as this is a voluntary action on the part of the provider.

D. Revocation of License or Denial of License Renewal. An HCBS provider license may be revoked or denied renewal for any of the following reasons, including but not limited to:

1. failure to be in substantial compliance with the HCBS licensing laws, rules and regulations;
2. failure to be in substantial compliance with other required statutes, laws, ordinances, rules or regulations;
3. failure to comply with the terms and provisions of a settlement agreement or education letter;
4. failure to uphold client rights whereby deficient practices result in harm, injury or death of a client;
5. failure to protect a client from a harmful act of an employee or other client including, but not limited to:
 - a. mental or physical abuse, neglect, exploitation or extortion;
 - b. any action posing a threat to a client's health and safety;
 - c. coercion;
 - d. threat or intimidation;
 - e. harassment; or
 - f. criminal activity;
6. failure to notify the proper authorities, as required by federal or state law or regulations, of all suspected cases of the acts outlined in §5021.D.5;
7. knowingly making a false statement in any of the following areas, including but not limited to:
 - a. application for initial license or renewal of license;
 - b. data forms;
 - c. clinical records, client records or provider records;
 - d. matters under investigation by the department or the Office of the Attorney General; or
 - e. information submitted for reimbursement from any payment source;
8. knowingly making a false statement or providing false, forged or altered information or documentation to DHH employees or to law enforcement agencies;
9. the use of false, fraudulent or misleading advertising; or
10. an owner, officer, member, manager, administrator, director or person designated to manage or supervise client care has pled guilty or nolo contendere to a felony, or has been convicted of a felony, as documented by a certified copy of the record of the court;
 - a. For purposes of these provisions, conviction of a felony involves any felony conviction relating to:
 - i. the violence, abuse, or negligence of a person;
 - ii. the misappropriation of property belonging to another person;
 - iii. cruelty, exploitation or the sexual battery of the infirmed;
 - iv. a drug offense;
 - v. crimes of a sexual nature;
 - vi. a firearm or deadly weapon;
 - vii. Medicare or Medicaid fraud; or

viii. fraud or misappropriation of federal or state funds;

11. failure to comply with all reporting requirements in a timely manner, as required by the department;

12. failure to allow or refusal to allow the department to conduct an investigation or survey or to interview provider staff or clients;

13. interference with the survey process, including but not limited to, harassment, intimidation, or threats against the survey staff;

14. failure to allow or refusal to allow access to provider, facility or client records by authorized departmental personnel;

15. bribery, harassment, intimidation or solicitation of any client designed to cause that client to use or retain the services of any particular HCBS provider;

16. cessation of business or non-operational status;

17. failure to repay an identified overpayment to the department or failure to enter into a payment agreement to repay such overpayment; or

18. failure to timely pay outstanding fees, fines, sanctions or other debts owed to the department.

E. In the event an HCBS provider license is revoked, renewal is denied (other than for cessation of business or non-operational status) or the license is surrendered in lieu of an adverse action, any owner, board member, director or administrator, and any other person named on the license application of such HCBS provider is prohibited from owning, managing, directing or operating another HCBS agency for a period of two years from the date of the final disposition of the revocation, denial action or surrender.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:69 (January 2012).

§5023. Notice and Appeal of License Denial, License Revocation and License Non-Renewal

A. Notice of a license denial, license revocation or license non-renewal (i.e. denial of license renewal) shall be given to the provider in writing.

B. The HCBS provider has a right to an informal reconsideration of the license denial, license revocation or license non-renewal. There is no right to an informal reconsideration of a voluntary non-renewal or surrender of a license by the provider.

1. The HCBS provider shall request the informal reconsideration within 15 days of the receipt of the notice of the license denial, license revocation or license non-renewal. The request for informal reconsideration shall be in writing and shall be forwarded to the department's Health Standards Section. The request for informal reconsideration shall be considered timely if received by the Health Standards Section within 15 days from the provider's receipt of the notice.

2. The request for informal reconsideration shall include any documentation that demonstrates that the determination was made in error.

3. If a timely request for an informal reconsideration is received by HSS, an informal reconsideration shall be scheduled and the provider will receive written notification of the date of the informal reconsideration.

4. The provider shall have the right to appear in person at the informal reconsideration and may be represented by counsel.

5. Correction of a violation or deficiency which is the basis for the license denial, revocation or non-renewal shall not be a basis for reconsideration.

6. The informal reconsideration process is not in lieu of the administrative appeals process.

7. The provider will be notified in writing of the results of the informal reconsideration.

C. The HCBS provider has a right to an administrative appeal of the license denial, license revocation or license non-renewal. There is no right to an administrative appeal of a voluntary non-renewal or surrender of a license by the provider.

1. The HCBS provider shall request the administrative appeal within 30 days of the receipt of the results of the informal reconsideration.

a. The HCBS provider may forego its rights to an informal reconsideration, and if so, shall request the administrative appeal within 30 calendar days of the receipt of the notice of the license denial, revocation or non-renewal.

2. The request for administrative appeal shall be in writing and shall be submitted to the Division of Administrative Law, or its successor. The request shall include any documentation that demonstrates that the determination was made in error and shall include the basis and specific reasons for the appeal.

3. If a timely request for an administrative appeal is received by the Division of Administrative Law, or its successor, the administrative appeal of the license revocation or license non-renewal shall be suspensive, and the provider shall be allowed to continue to operate and provide services until such time as the department issues a final administrative decision.

a. If the secretary of the department determines that the violations of the provider pose an imminent or immediate threat to the health, welfare or safety of a client, the imposition of the license revocation or license non-renewal may be immediate and may be enforced during the pendency of the administrative appeal. If the secretary of the department makes such a determination, the provider will be notified in writing.

4. Correction of a violation or a deficiency which is the basis for the denial, revocation or non-renewal shall not be a basis for an administrative appeal.

D. If an existing licensed HCBS provider has been issued a notice of license revocation, and the provider's license is due for annual renewal, the department shall deny the license renewal application. The denial of the license renewal application does not affect, in any manner, the license revocation.

E. If a timely administrative appeal has been filed by the provider on a license denial, license non-renewal or license revocation, the Division of Administrative Law, or its successor, shall conduct the hearing within 90 calendar days of the docketing of the administrative appeal. One extension, not to exceed 90 days, may be granted by the Division of Administrative Law, or its successor, if good cause is shown.

1. If the final agency decision is to reverse the license denial, license non-renewal or license revocation, the

provider's license will be re-instated or granted upon the payment of any licensing fees, outstanding sanctions or other fees due to the department.

2. If the final agency decision is to affirm the license non-renewal or license revocation, the provider shall discharge any and all clients receiving services according to the provisions of this Chapter.

a. Within 10 calendar days of the final agency decision, the provider must notify HSS, in writing, of the secure and confidential location where the client records will be stored.

F. There is no right to an informal reconsideration or an administrative appeal of the issuance of a provisional initial license to a new HCBS provider, or the issuance of a provisional license to an existing HCBS provider. A provider who has been issued a provisional license is licensed and operational for the term of the provisional license. The issuance of a provisional license is not considered to be a denial of license, renewal or revocation.

G. A provider with a provisional initial license or an existing provider with a provisional license that expires due to noncompliance or deficiencies cited at the follow-up survey, shall have the right to an informal reconsideration and the right to an administrative appeal, as to the deficiencies.

1. The correction of a violation, noncompliance or deficiency after the follow-up survey shall not be the basis for the informal reconsideration or for the administrative appeal.

2. The informal reconsideration and the administrative appeal are limited to whether the deficiencies were properly cited at the follow-up survey.

3. The provider shall request the informal reconsideration in writing, which shall be received by the Health Standards Section within five days of receipt of the notice of the results of the follow-up survey from the department.

4. The provider shall request the administrative appeal within 15 days of receipt of the notice of the results of the follow-up survey from the department. The request for administrative appeal shall be in writing and shall be submitted to the Division of Administrative Law, or its successor.

5. A provider with a provisional initial license or an existing provider with a provisional license that expires under the provisions of this Chapter shall cease providing services and discharge clients unless the Division of Administrative Law, or its successor, issues a stay of the expiration.

a. The stay may be granted by the Division of Administrative Law, or its successor, upon application by the provider at the time the administrative appeal is filed and only after a contradictory hearing and only upon a showing that there is no potential harm to the clients being served by the provider.

6. If a timely administrative appeal has been filed by a provider with a provisional initial license that has expired, or by an existing provider whose provisional license has expired under the provisions of this Chapter, the Division of Administrative Law, or its successor, shall conduct the hearing within 90 calendar days of the docketing of the administrative appeal. One extension, not to exceed 90 days,

may be granted by the Division of Administrative Law, or its successor, if good cause is shown.

a. If the final agency decision is to remove all deficiencies, the provider's license will be re-instated upon the payment of any outstanding sanctions and licensing or other fees due to the department.

b. If the final agency decision is to uphold the deficiencies and affirm the expiration of the provisional license, the provider shall discharge any and all clients receiving services.

i. Within 10 calendar days of the final agency decision, the provider must notify HSS in writing of the secure and confidential location where the client records will be stored.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:70 (January 2012).

§5025. Inactivation of License due to a Declared Disaster or Emergency

A. An HCBS provider licensed in a parish which is the subject of an executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766, may seek to inactivate its license for a period not to exceed one year, provided that the following conditions are met:

1. the licensed provider shall submit written notification to the Health Standards Section within 60 days of the date of the executive order or proclamation of emergency or disaster that:

a. the HCBS provider has experienced an interruption in the provisions of services as a result of events that are the subject of such executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766;

b. the licensed HCBS provider intends to resume operation as an HCBS provider in the same service area;

c. includes an attestation that the emergency or disaster is the sole casual factor in the interruption of the provision of services;

d. includes an attestation that all clients have been properly discharged or transferred to another provider; and

e. provides a list of each client and where that client is discharged or transferred to;

2. the licensed HCBS provider resumes operating as a HCBS provider in the same service area within one year of the issuance of an executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766;

3. the licensed HCBS provider continues to pay all fees and cost due and owed to the department including, but not limited to, annual licensing fees and outstanding civil monetary penalties; and

4. the licensed HCBS provider continues to submit required documentation and information to the department.

B. Upon receiving a completed written request to inactivate a HCBS provider license, the department shall issue a notice of inactivation of license to the HCBS provider.

C. Upon completion of repairs, renovations, rebuilding or replacement, an HCBS provider which has received a

notice of inactivation of its license from the department shall be allowed to reinstate its license upon the following conditions being met.

1. The HCBS provider shall submit a written license reinstatement request to the licensing agency of the department 60 days prior to the anticipated date of reopening.

a. The license reinstatement request shall inform the department of the anticipated date of opening, and shall request scheduling of a licensing survey.

b. The license reinstatement request shall include a completed licensing application with appropriate licensing fees.

2. The provider resumes operating as an HCBS provider in the same service area within one year.

D. Upon receiving a completed written request to reinstate an HCBS provider license, the department shall conduct a licensing survey. If the HCBS provider meets the requirements for licensure and the requirements under this Section, the department shall issue a notice of reinstatement of the HCBS provider license.

1. The licensed capacity of the reinstated license shall not exceed the licensed capacity of the HCBS provider at the time of the request to inactivate the license.

E. No change of ownership in the HCBS provider shall occur until such HCBS provider has completed repairs, renovations, rebuilding or replacement construction, and has resumed operations as an HCBS provider.

F. The provisions of this Section shall not apply to an HCBS provider which has voluntarily surrendered its license and ceased operation.

G. Failure to comply with any of the provisions of this Section shall be deemed a voluntary surrender of the HCBS provider license and any applicable facility need review approval for licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:72 (January 2012).

Subchapter B. Administration and Organization **§5027. Governing Body**

A. An HCBS provider shall have an identifiable governing body with responsibility for and authority over the policies and activities of the program/agency.

1. A provider shall have documents identifying all members of the governing body, their addresses, their terms of membership, officers of the governing body and terms of office of any officers.

2. The governing body shall be comprised of three or more persons and shall hold formal meetings at least twice a year.

3. There shall be written minutes of all formal meetings of the governing body and by-laws specifying frequency of meetings and quorum requirements.

B. The governing body of an HCBS provider shall:

1. ensure the provider's continual compliance and conformity with all relevant federal, state, local and municipal laws and regulations;

2. ensure that the provider is adequately funded and fiscally sound;

3. review and approve the provider's annual budget;

4. designate a person to act as administrator and delegate sufficient authority to this person to manage the provider agency;

5. formulate and annually review, in consultation with the administrator, written policies concerning the provider's philosophy, goals, current services, personnel practices, job descriptions and fiscal management;

6. annually evaluate the administrator's performance;

7. have the authority to dismiss the administrator;

8. meet with designated representatives of the department whenever required to do so;

9. inform Health Standards prior to initiating any substantial changes in the nature and scope of services provided by the provider; and

10. ensure statewide criminal background checks on all unlicensed persons providing direct care and services to clients in accordance with R.S. 40:1300.52 or other applicable state law; and

11. ensure that direct support staff comply with R.S. 40:1300.52 or other applicable state law.

C. An HCBS provider shall maintain an administrative file that includes:

1. documents identifying the governing body;

2. a list of members and officers of the governing body, along with their addresses and terms of membership;

3. minutes of formal meetings and by-laws of the governing body, if applicable;

4. a copy of the current license issued by Health Standards;

5. an organizational chart of the provider which clearly delineates the line of authority;

6. all leases, contracts and purchases-of-service agreements to which the provider is a party;

7. insurance policies;

8. annual budgets and audit reports; and

9. a master list of all the community resources used by the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORY NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:72 (January 2012).

§5029. Policy and Procedures

A. An HCBS provider shall provide supervision and services that:

1. conform to the department's rules and regulations;

2. meet the needs of the clients as identified and addressed in the ISP;

3. provide for the full protection of clients' rights; and

4. promote the social, physical and mental well-being of clients;

B. An HCBS provider shall make any required information or records, and any information reasonably related to assessment of compliance with these requirements, available to the department.

C. An HCBS provider shall allow designated representatives of the department, in performance of their mandated duties, to:

1. inspect all aspects of an HCBS provider's operations which directly or indirectly impact clients; and

2. conduct interviews with any staff member or client of the provider.

D. An HCBS provider shall, upon request by the department, make available the legal ownership documents.

E. The HCBS provider shall have written policies and procedures approved by the owner or governing body, which must be implemented and followed, that address at a minimum the following:

1. confidentiality and confidentiality agreements;

2. security of files;

3. publicity and marketing, including the prohibition of illegal or coercive inducement, solicitation and kickbacks;

4. personnel;

5. client rights;

6. grievance procedures;

7. client funds;

8. emergency preparedness;

9. abuse and neglect;

10. incidents and accidents, including medical emergencies;

11. universal precautions;

12. documentation; and

13. admission and discharge procedures.

F. An HCBS provider shall have written personnel policies, which must be implemented and followed, that include:

1. a plan for recruitment, screening, orientation, ongoing training, development, supervision and performance evaluation of staff members;

2. written job descriptions for each staff position, including volunteers;

3. policies that shall, at a minimum, be consistent with Office of Public Health guidelines to indicate whether, when, and how staff have a health assessment;

4. an employee grievance procedure;

5. abuse reporting procedures that require all employees to report any incidents of abuse or mistreatment, whether that abuse or mistreatment is done by another staff member, a family member, a client or any other person; and

6. a written policy to prevent discrimination.

G. An HCBS provider shall maintain, in force at all times, the requirements for financial viability under this rule.

H. The provider shall have written policies and procedures for behavior management which:

1. prohibits:

a. corporeal punishment;

b. chemical restraints;

c. psychological and verbal abuse;

d. seclusion;

e. forced exercise;

f. physical and mechanical restraints;

f. any cruel, severe, unusual, degrading or unnecessary punishment; and

g. any procedure which denies:

i. food;

ii. drink;

iii. visits with family; or

iv. use of restroom facilities;

2. ensure that non-intrusive positive approaches to address the meaning/origins of behaviors are used prior to the development of a restrictive plan; and

3. cover any behavioral emergency and provide documentation of the event in an incident report format.

I. An HCBS provider shall comply with all federal and state laws, rules and regulations in the development and implementation of its policies and procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORY NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:73 (January 2012).

§5031. Business Location

A. All HCBS providers shall have a business location in the DHH Region for which the license is issued. The business location shall be a part of the physical geographic licensed location and shall be where the provider:

1. maintains staff to perform administrative functions;
2. maintains the provider's personnel records;
3. maintains the provider's client service records; and
4. holds itself out to the public as being a location for receipt of client referrals.

B. The business location shall have a separate entrance and exit from any other entity, business or trade, and shall have appropriate signage indicating the legal or trade name and address of the health care provider. The HCBS provider shall operate independently from any other business or entity, and shall not operate office space with any other business or entity.

1. The HCBS provider may share common areas with another business or entity. Common areas include foyers, kitchens, conference rooms, hallways, stairs, elevators or escalators when used to provide access to the provider's separate entrance.

2. Records or other confidential information shall not be stored in areas deemed to be common areas.

C. The business location shall:

1. be commercial office space or, if located in a residential area, be zoned for appropriate commercial use and shall be used solely for the operation of the business;

a. the business location may not be located in an occupied personal residence;

2. have approval from the Louisiana Office of the State Fire Marshal;

3. have a published telephone number which is available and accessible 24 hours a day, seven days a week, including holidays;

4. have a business fax number that is operational 24 hours a day, seven days a week;

5. have internet access and a working e-mail address;

a. the e-mail address shall be provided to the department;

6. have hours of operation posted in a location outside of the business that is easily visible to persons receiving services and the general public; and

7. have space for storage of client records in an area that is secure and does not breach confidentiality of personal health information.

D. Branch Offices and Satellites of HCBS Providers

1. An HCBS provider who currently provides in-home services such as PCA, respite or SIL services may apply to the department for approval to operate a branch office to provide those same services. The branch office falls under the license of the parent agency and shall be located in the same DHH Region as the parent agency.

2. An HCBS provider who currently provides ADC services or provides center-based respite services may apply to the department for approval to operate a satellite location to provide additional ADC services or center-based respite services at that satellite location. The satellite location falls under the license of the parent agency and shall be located in the same DHH Region as the parent agency.

3. No branch office or satellite location may be opened without written approval from the department. In order for a branch office or satellite location to be approved, the parent agency must have full licensure for at least one year. Branch office approvals and satellite location approvals will be renewed at the time of renewal of the parent agency's license, if the parent agency meets the requirements for licensure.

4. The department will consider the following in making a determination whether to approve a branch office or a satellite location:

a. compliance history of the provider to include the scope and severity of deficiencies cited within the last 12 months;

b. the number and nature of validated complaints within the last 12 months;

c. the parent agency has a provisional license;

d. the parent agency is under license revocation;

e. the parent agency is undergoing a change of ownership; or

f. adverse action, including license revocation, denial or suspension, has been taken against the license of other agencies operated by the owner of the parent agency.

5. The branch office or satellite location shall be held out to the public as a branch, division, or satellite of the parent agency so that the public will be aware of the identity of the agency operating the branch or satellite.

a. Reference to the name of the parent agency shall be contained in any written documents, signs or other promotional materials relating to the branch or satellite.

6. Original personnel files shall not be maintained at the branch office or satellite location.

7. A branch office or a satellite location is subject to survey, including complaint surveys, by the department at any time to determine compliance with minimum licensing standards.

8. A branch office or a satellite location shall:

a. serve as part of the geographic service area approved for the parent agency;

b. retain an original or duplicate copy of all clinical records for its clients for a 12 month period. Duplicate records need not be maintained at the parent agency, but shall be made available to state surveyors during any survey upon request within a reasonable amount of time;

c. maintain a statement of personnel policies on-site for staff usage;

d. post and maintain regular office hours; and

e. staff the branch office or satellite location during regular office hours.

9. Each branch office shall be assessed a fee of \$200, assessed at the time the license application is made for the branch and once a year thereafter for renewal of the branch license. This fee is non-refundable and is in addition to any other fees that may be assessed according to the laws, rules, regulations and standards.

10. Each satellite location shall be assessed a fee of \$250, assessed at the time the license application is made for the satellite location and once a year thereafter for renewal of the satellite location license. This fee is non-refundable and is in addition to any other fees that may be assessed according to the laws, rules, regulations and standards.

11. The department at its sole discretion, and taking into consideration resources of the department, may approve branch offices for HCBS providers rendering in-home services.

12. The department at its sole discretion, and taking into consideration resources of the department, may approve satellite locations for HCBS providers rendering center-based respite or adult day care services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:74 (January 2012).

Subchapter C. Admission, Transfer and Discharge Criteria

§5033. Admissions

A. An HCBS provider shall have written admissions policies and criteria which shall include the following:

1. intake policy and procedures;
2. admission criteria and procedures;
3. admission criteria and procedures for minors;
4. policy regarding the determination of legal status, according to appropriate state laws, before admission;
5. the age of the populations served;
6. the services provided by the provider's program(s); and
7. criteria for discharge.

B. The written description of admissions policies and criteria shall be provided to the department upon request, and made available to the client and his/her legal representative.

C. An HCBS provider shall ensure that the client, the legal representative, where appropriate, or other persons are provided an opportunity to participate in the admission process and decisions.

1. Proper consents shall be obtained before admission.
2. Where such involvement of the client is not possible or not desirable, the reasons for their exclusion shall be recorded.

D. An HCBS provider shall not refuse admission to any client on the grounds of race, national origin, ethnicity or disability.

E. An HCBS provider shall meet the needs of each client admitted to his/her program as identified and addressed in the client's ISP.

F. When refusing admission, a provider shall provide a written statement as to the reason for the refusal. This shall be provided to designated representatives of the department or to a client upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:75 (January 2012).

§5035. Voluntary Transfers and Discharges

A. A client has the right to choose a provider. This right includes the right to be discharged from his current provider,

be transferred to another provider and to discontinue services altogether.

B. Upon notice by the client or authorized representative that the client has selected another provider or has decided to discontinue services or moves from the geographical region serviced by the provider, the HCBS provider shall have the responsibility of planning for a client's voluntary transfer or discharge.

C. The transfer or discharge responsibilities of the HCBS provider shall include:

1. holding a transfer or discharge planning conference with the client, family, support coordinator, legal representative and advocate, if such are known, in order to facilitate a smooth transfer or discharge, unless the client declines such a meeting;

2. providing a current individual service plan (ISP). Upon written request and authorization by the client or authorized representative, a copy of the current ISP shall be provided to the client or receiving provider; and

3. preparing a written discharge summary. The discharge summary shall include, at a minimum, a summary on the health, developmental issues, behavioral issues, social issues, and nutritional status of the client. Upon written request and authorization by the client or authorized representative, a copy of the discharge summary shall be disclosed to the client or receiving provider.

D. The written discharge summary shall be completed within five working days of the notice by the client or authorized representative that the client has selected another provider or has decided to discontinue services.

1. The provider's preparation of the discharge summary shall not impede or impair the client's right to be transferred or discharged immediately if the client so chooses.

E. The provider shall not coerce the client to stay with the provider agency or interfere in any way with the client's decision to transfer. Failure to cooperate with the client's decision to transfer to another provider will result in adverse action by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:75 (January 2012).

§5037. Involuntary Transfers and Discharges

A. An HCBS provider shall not transfer or discharge the client from the provider except under the following circumstances. These situations will be considered involuntary transfers or discharges.

1. The client's health has improved sufficiently so that the client no longer needs the services rendered by the provider.

2. The safety or health of a client(s) or provider staff is endangered.

3. The client has failed to pay any past due amounts for services for which he/she is liable within 15 days after receipt of written notice from the provider.

4. The provider ceases to operate.

5. The client or family refuses to cooperate or interferes with attaining the objectives of the HCBS provider.

6. The HCBS provider closes a particular module so that certain services are no longer provided.

B. When the provider proposes to involuntarily transfer or discharge a client, compliance with the provisions of this Section shall be fully documented in the client's records.

C. An HCBS provider shall provide a written notice of the involuntary transfer or discharge to the client, a family member of the client, if known, to the authorized representative if known, and the support coordinator if applicable, at least 30 calendar days prior to the transfer or discharge.

1. The written notice shall be sent via certified mail, return receipt requested.

2. When the safety or health of clients or provider staff is endangered, written notice shall be given as soon as practicable before the transfer or discharge.

3. When the client has failed to pay any outstanding amounts for services for which he is liable, written notice may be given immediately. Payment is due within 15 days of receipt of written notice from the provider that an amount is due and owing.

4. The notice of involuntary discharge or transfer shall be in writing and in a language and manner that the client understands.

5. A copy of the notice of involuntary discharge or transfer shall be placed in the client's clinical record.

D. The written notice of involuntary transfer or discharge shall include:

1. a reason for the transfer or discharge;
2. the effective date of the transfer or discharge;
3. an explanation of a client's right to personal and/or third party representation at all stages of the transfer or discharge process;
4. contact information for the Advocacy Center;
5. names of provider personnel available to assist the client and family in decision making and transfer arrangements;
6. the date, time and place for the discharge planning conference;
7. a statement regarding the client's appeal rights;
8. the name of the director, current address and telephone number of the Division of Administrative Law, or its successor; and
9. a statement regarding the client's right to remain with the provider and not be transferred or discharged if an appeal is timely filed.

E. Appeal Rights for Involuntary Transfers or Discharges

1. If a timely appeal is filed by the client or authorized representative disputing the involuntary discharge, the provider shall not transfer or discharge the client pursuant to the provisions of this Section.

NOTE: The provider's failure to comply with these requirements may result in revocation of a provider's license.

2. If nonpayment is the basis of the involuntary transfer or discharge, the client shall have the right to pay the balance owed to the provider up to the date of the transfer or discharge and is then entitled to remain with the agency if outstanding balances are paid.

3. If a client files a timely appeal request, the Division of Administrative Law, or its successor, shall hold an appeal hearing at the agency or by telephone, if agreed upon by the appellant, within 30 days from the date the appeal is filed with the Division of Administrative Law, or its successor.

a. If the basis of the involuntary discharge is due to endangerment of the health or safety of the staff or individuals, the provider may make a written request to the Division of Administrative Law, or its successor, to hold a pre-hearing conference.

i. If a pre-hearing conference request is received by the Division of Administrative Law, or its successor, the pre-hearing conference shall be held within 10 days of receipt of the written request from the provider.

4. The Division of Administrative Law, or its successor, shall issue a decision within 30 days from the date of the appeal hearing.

5. The burden of proof is on the provider to show, by a preponderance of the evidence, that the transfer or discharge of the client is justified pursuant to the provisions of the minimum licensing standards.

F. Client's Right to Remain with the Provider Pending the Appeal Process

1. If a client is given 30 calendar days written notice of the involuntary transfer or discharge and the client or authorized representative files a timely appeal, the client may remain with the provider and not be transferred or discharged until the Division of Administrative Law, or its successor, renders a decision on the appeal.

2. If a client is given less than 30 calendar days written notice and files a timely appeal of an involuntary transfer/discharge based on the health and safety of individuals or provider staff being endangered, the client may remain with the provider and not be transferred or discharged until one of the following occurs:

a. the Division of Administrative Law, or its successor, holds a pre-hearing conference regarding the safety or health of the staff or individuals; or

b. the Division of Administrative Law, or its successor, renders a decision on the appeal.

3. If a client is given less than 30 calendar days written notice and files a timely appeal of an involuntary transfer/discharge based on the client's failure to pay any outstanding amounts for services within the allotted time, the provider may discharge or transfer the client.

G. The transfer or discharge responsibilities of the HCBS provider shall include:

1. holding a transfer or discharge planning conference with the client, family, support coordinator, legal representative and advocate, if such are known, in order to facilitate a smooth transfer or discharge;

2. development of discharge options that will provide reasonable assurance that the client will be transferred or discharged to a setting that can be expected to meet his/her needs;

2. preparing an updated ISP; and

3. preparing a written discharge summary. The discharge summary shall include, at a minimum, a summary of the health, developmental issues, behavioral issues, social issues and nutritional status of the client. Upon written request and authorization by the client or authorized representative, a copy of the discharge summary and/or updated ISP shall be disclosed to the client or receiving provider.

H. The agency shall provide all services required prior to discharge that are contained in the final update of the individual service plan and in the transfer or discharge plan.

1. The provider shall not be required to provide services if the discharge is due to the client moving out of the provider's geographical region. An HCBS provider is prohibited from providing services outside of its geographical region without the Department's approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:75 (January 2012).

Subchapter D. Service Delivery

§5039. General Provisions

A. The HCBS provider shall ensure that the client receives the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being of the client, in accordance with the comprehensive assessment and individual service plan.

B. All services provided to the client shall be provided in accordance with an individual service plan.

C. Assessment of Needs

1. Prior to any service being rendered, an HCBS provider shall conduct an assessment of the client's needs. The assessment shall include, at a minimum:

- a. risk assessment, including:
 - i. life safety (i.e. the ability to access emergency services, basic safety practices and evaluation of the living unit);
 - ii. home environment;
 - iii. environmental risk; and
 - iv. medical risk;
- b. medical assessments, including:
 - i. diagnosis;
 - ii. medications, including methods of administration; and
 - iii. current services and treatment regimen;
- c. activities of daily living;
- d. instrumental activities of daily living including money management, if applicable;
- e. communication skills;
- f. social skills; and
- g. psychosocial skills including behavioral needs.

2. If medical issues are identified in the assessment, a licensed physician or licensed registered nurse (RN) shall perform a medical assessment to determine necessary supports and services which shall be addressed in the ISP.

3. The assessment shall be conducted prior to admission and at least annually thereafter. The assessment may be conducted more often as the client's needs change.

4. An HCBS comprehensive assessment performed for a client in accordance with policies and procedures established by Medicaid or by a DHH program office for reimbursement purposes can substitute for the assessment required under these provisions.

D. Service Agreement

1. An HCBS provider shall ensure that a written service agreement is completed prior to admission of a client. A copy of the agreement, signed by all parties involved, shall be maintained in the client's record and shall be made available upon request by the department, the client and the legal representative, where appropriate.

2. The service agreement shall include:

- a. a delineation of the respective roles and responsibilities of the provider;

b. specification of all of the services to be rendered by the provider;

c. the provider's expectations concerning the client; and

d. specification of the financial arrangements, including any fees to be paid by the client.

3. An HCBS plan of care or agreement to provide services signed by the provider or client in accordance with policies and procedures established by Medicaid or by a DHH program office for reimbursement purposes can substitute for the agreement required under these provisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:77 (January 2012).

§5041. Individual Service Plan

A. Upon admission and prior to the initiation of care and services, an individual service plan shall be developed for each client based upon a comprehensive assessment.

B. The client shall participate in the planning process. If the client is unable to participate in all or part of the planning, the provider shall document the parts or times and reasons why the client did not participate.

C. The agency shall document that they consulted with the client or legal representative regarding who should be involved in the planning process.

D. The agency shall document who attends the planning meeting.

E. The provider shall ensure that the ISP and any subsequent revisions are explained to the client receiving services and, where appropriate, the legal representative, in language that is understandable to them.

F. The ISP shall include the following components:

1. the findings of the comprehensive assessment;
2. a statement of goals to be achieved or worked towards for the person receiving services and their family or legal representative;
3. daily activities and specialized services that will be provided directly or arranged for;
4. target dates for completion or re-evaluation of the stated goals; and

5. identification of all persons responsible for implementing or coordinating implementation of the plan.

G. The provider shall ensure that all agency staff working directly with the person receiving services are appropriately informed of and trained on the ISP.

H. A comprehensive plan of care prepared in accordance with policies and procedures established by Medicaid or by a DHH program office for reimbursement purposes may be substituted for the individual service plan.

I. Each client's ISP shall be reviewed, revised, updated and amended annually, and more often as necessary, to reflect changes in the client's needs, services and personal outcomes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:77 (January 2012).

§5043. Contract Services

A. A provider may enter into contracts or other agreements with other companies or individuals to provide

services to a client. The provider is still responsible for the management of the client's care and for all services provided to the client by the contractor or its personnel.

B. When services are provided through contract, a written contract must be established. The contract shall include all of the following items:

1. designation of the services that are being arranged for by contract;
2. specification of the period of time that the contract is to be in effect;
3. a statement that the services provided to the client are in accordance with the individual service plan;
4. a statement that the services are being provided within the scope and limitations set forth in the individual service plan and may not be altered in type, scope or duration by the contractor;
5. assurance that the contractor meets the same requirements as those for the provider's staff, such as staff qualifications, functions, evaluations, orientation and in-service training;
 - a. the provider shall be responsible for assuring the contractor's compliance with all personnel and agency policies required for HCBS providers during the contractual period;
6. assurance that the contractor completes the clinical record in the same timely manner as required by the staff of the provider;
7. payment of fees and terms; and
8. assurance that reporting requirements are met.

C. The provider and contractor shall document review of their contract on an annual basis.

D. The provider shall coordinate services with contract personnel to assure continuity of client care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:77 (January 2012).

§5045. Transportation

A. An HCBS provider shall arrange for or provide transportation necessary for implementing the client's service plan.

B. Any vehicle owned by the agency or its employees used to transport clients shall be:

1. properly licensed and inspected in accordance with state law;
2. maintained in a safe condition;
3. operated at a temperature that does not compromise the health, safety or needs of the client.

C. The provider shall have proof of liability insurance coverage for any vehicle owned by the agency or its employees that are used to transport clients. The personal liability insurance of a provider's employee shall not be substituted for the required coverage.

D. Any staff member of the provider, or other person acting on behalf of the provider, who is operating a vehicle owned by the agency or its employees for the purpose of transporting clients shall be properly licensed to operate that class of vehicle in accordance with state law.

E. The provider shall have documentation of successful completion of a safe driving course for each employee who transports clients.

1. Employees shall successfully complete a safe driving course within 90 days of hiring, every three years thereafter, and within 90 days of the provider's discovery of any moving violation.

F. Upon hire, the provider shall conduct a driving history record of each employee, and annually thereafter.

G. The provider shall not allow the number of persons in any vehicle used to transport clients to exceed the number of available seats with seatbelts in the vehicle.

H. The provider shall ascertain the nature of any need or problem of a client which might cause difficulties during transportation. This information shall be communicated to agency staff who will transport clients.

I. The following additional arrangements are required for transporting non-ambulatory clients who cannot otherwise be transferred to and from the vehicle.

1. A ramp device to permit entry and exit of a client from the vehicle shall be provided for vehicles.

a. A mechanical lift may be utilized, provided that a ramp is also available in case of emergency, unless the mechanical lift has a manual override.

2. Wheelchairs used in transit shall be securely fastened inside the vehicle utilizing approved wheelchair fasteners.

3. The arrangement of the wheelchairs shall not impede access to the exit door of the vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:78 (January 2012).

Subchapter E. Client Protections

§5049. Client Rights

A. Unless adjudicated by a court of competent jurisdiction, clients served by HCBS providers shall have the same rights, benefits and privileges guaranteed by the constitution and the laws of the United States and Louisiana.

B. There shall be written policies and procedures that protect the client's welfare, including the means by which the protections will be implemented and enforced.

C. Each HCBS provider's written policies and procedures, at a minimum, shall ensure the client's right to:

1. human dignity;
2. impartial access to treatment regardless of race, religion, sex, ethnicity, age or disability;
3. cultural access as evidenced by:
 - a. interpretive services;
 - b. translated materials;
 - c. the use of native language when possible; and
 - d. staff trained in cultural awareness;
4. have sign language interpretation, allow for the use of service animals and/or mechanical aids and devices that assist those persons in achieving maximum service benefits when the person has special needs;
5. privacy;
6. confidentiality;
7. access his/her records upon the client's written consent for release of information;
8. a complete explanation of the nature of services and procedures to be received, including:
 - a. risks;
 - b. benefits; and

- c. available alternative services;
- 9. actively participate in services, including:
 - a. assessment/reassessment;
 - b. service plan development; and
 - c. discharge;
- 10. refuse specific services or participate in any activity that is against their will and for which they have not given consent;
- 11. obtain copies of the provider's complaint or grievance procedures;
- 12. file a complaint or grievance without retribution, retaliation or discharge;
- 13. be informed of the financial aspect of services;
- 14. be informed of the need for parental or guardian consent for treatment of services, if appropriate;
- 15. personally manage financial affairs, unless legally determined otherwise;
- 16. give informed written consent prior to being involved in research projects;
- 17. refuse to participate in any research project without compromising access to services;
- 18. be free from mental, emotional and physical abuse and neglect;
- 19. be free from chemical or physical restraints;
- 20. receive services that are delivered in a professional manner and are respectful of the client's wishes concerning their home environment;
- 21. receive services in the least intrusive manner appropriate to their needs;
- 22. contact any advocacy resources as needed, especially during grievance procedures; and
- 23. discontinue services with one provider and freely choose the services of another provider.

D. An HCBS provider shall assist in obtaining an independent advocate:

- 1. if the client's rights or desires may be in jeopardy;
- 2. if the client is in conflict with the provider; or
- 3. upon any request of the client.

E. The client has the right to select an independent advocate, which may be:

- 1. a legal assistance corporation;
- 2. a state advocacy and protection agency;
- 3. a trusted church or family member; or
- 4. any other competent key person not affiliated in any way with the licensed provider.

F. The client, client's family and legal guardian, if one is known, shall be informed of their rights, both verbally and in writing in a language they are able to understand.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:78 (January 2012).

§5051. Grievances

A. The agency shall establish and follow a written grievance procedure to be used to formally resolve complaints by clients, their family member(s) or a legal representative regarding provision of services. The written grievance procedure shall be provided to the client.

1. The notice of grievance procedure shall include the names of organizations that provide free legal assistance.

B. The client, family member or legal representative shall be entitled to initiate a grievance at any time.

C. The agency shall annually explain the grievance procedure to the client, family member(s) or a legal representative, utilizing the most appropriate strategy for ensuring an understanding of what the grievance process entails.

1. The agency shall provide the grievance procedure in writing and grievance forms shall be made available.

D. The administrator of the agency, or his/her designee, shall investigate all grievances and shall make all reasonable attempts to address the grievance.

E. The administrator of the agency, or his/her designee, shall issue a written report and/or decision within five business days of receipt of the grievance to the:

- 1. client;
- 2. client's advocate;
- 3. authorized representative; and
- 4. the person making the grievance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:79 (January 2012).

Subchapter F. Provider Responsibilities

§5053. General Provisions

A. HCBS providers shall have qualified staff sufficient in number to meet the needs of each client as specified in the ISP and to respond in emergency situations.

B. Additional staff shall be employed as necessary to ensure proper care of clients and adequate provision of services.

C. Staff shall have sufficient communication and language skills to enable them to perform their duties and interact effectively with clients and other staff persons.

D. All client calls to the provider's published telephone number shall be returned within an appropriate amount of time not to exceed one business day. Each client shall be informed of the provider's published telephone number, in writing, as well as through any other method of communication most readily understood by the client according to the following schedule:

- 1. upon admission to the HCBS provider agency;
- 2. at least once per year after admission; and
- 3. when the provider's published telephone number changes.

E. HCBS providers shall establish policies and procedures relative to the reporting of abuse and neglect of clients, pursuant to the provisions of R.S. 15:1504-1505, R.S. 40:2009.20 and any subsequently enacted laws. Providers shall ensure that staff complies with these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORY NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:79 (January 2012).

§5055. Core Staffing Requirements

A. Administrative Staff. The following administrative staff is required for all HCBS providers:

1. a qualified administrator at each licensed geographic location who shall meet the qualifications as established in these provisions; and

2. other administrative staff as necessary to properly safeguard the health, safety and welfare of the clients receiving services.

B. Administrator Qualifications

1. The administrator shall be a resident of the state of Louisiana and shall have a minimum of the following educational qualifications and experience:

a. a bachelor's degree; and

b. a minimum of four years of verifiable experience working in a field providing services to the elderly and/or persons with developmental disabilities.

2. Any person convicted of a felony as defined in these provisions is prohibited from serving as the administrator of an HCBS provider agency.

C. Administrator Responsibilities. The administrator shall:

1. be a full time employee of the HCBS provider and shall not be a contract employee;

2. be available in person or by telecommunication at all times for all aspects of agency operation or designate in writing an individual to assume the authority and control of the agency if the administrator is temporarily unavailable;

3. direct the operations of the agency;

4. be responsible for compliance with all regulations, laws, policies and procedures applicable to home and community-based service providers;

5. employ qualified individuals and ensure adequate staff education and evaluations;

6. ensure the accuracy of public information and materials;

7. act as liaison between staff, contract personnel and the governing body;

8. implement an ongoing, accurate and effective budgeting and accounting system;

9. ensure that all staff receive proper orientation and training on policies and procedures, client care and services and documentation, as required by law or as necessary to fulfill each staff person's responsibilities;

10. assure that services are delivered according to the client's individual service plan; and

11. not serve as administrator for more than one licensed HCBS provider.

D. Professional Services Staff

1. The provider shall employ, contract with or assure access to all necessary professional staff to meet the needs of each client as identified and addressed in the client's ISP. The professional staff may include, but not be limited to:

a. licensed practical nurses;

b. registered nurses;

c. speech therapists;

d. physical therapists;

e. occupational therapists;

f. social workers; and

g. psychologists.

2. Professional staff employed or contracted by the provider shall hold a current, valid license issued by the appropriate licensing board and shall comply with continuing education requirements of the appropriate board.

3. The provider shall maintain proof of annual verification of current license of all professional staff.

4. All professional services furnished or provided shall be provided in accordance with acceptable professional practice standards, according to the scope of practice requirements for each licensed discipline.

E. Direct Care Staff

1. The provider shall be staffed with direct care staff to properly safeguard the health, safety and welfare of clients.

2. The provider shall employ direct care staff to ensure the provision of home and community-based services as required by the ISP.

3. The HCBS provider shall ensure that each client who receives HCBS services has a written individualized back-up staffing plan and agreement for use in the event that the assigned direct care staff is unable to provide support due to unplanned circumstances, including emergencies which arise during a shift. A copy of the individualized plan and agreement shall be provided to the client and/or the client's legally responsible party, and if applicable, to the support coordinator, within five working days of the provider accepting the client.

F. Direct Care Staff Qualifications

1. All providers who receive state or federal funds, and compensate their direct service workers with such funds, shall ensure that all non-licensed direct care staff meet the minimum mandatory qualifications and requirements for direct service workers as required by R.S. 40:2179-40:2179.1 or a subsequently amended statute and any rules published pursuant to those statutes.

2. All direct care staff shall have the ability to read, write and carry out directions competently as assigned.

a. The training must address areas of weakness, as determined by the worker's performance reviews, and may address the special needs of clients.

3. All direct care staff shall be trained in recognizing and responding to the medical emergencies of clients.

G. Direct Care Staff Responsibilities. The direct care staff shall:

1. provide personal care services to the client, per the ISP;

2. provide the direct care services to the client at the time and place assigned;

3. report and communicate changes in a client's condition to a supervisor immediately upon discovery of the change;

4. report and communicate a client's request for services or change in services to a supervisor within 24 hours of the next business day of such request;

5. follow emergency medical training while attending the client;

6. subsequently report any medical or other types of emergencies to the supervisor, the provider or others, pursuant to the provider policies and procedures;

7. report any suspected abuse, neglect or exploitation of clients to a supervisor on the date of discovery, and as required by law;

8. be trained on daily documentation such as progress notes and progress reports; and

9. be responsible for daily documentation of services provided and status of clients to be reported on progress notes and/or progress reports.

H. Volunteers/Student Interns

1. A provider utilizing volunteers or student interns on a regular basis shall have a written plan for using such resources. This plan shall be given to all volunteers and interns. The plan shall indicate that all volunteers and interns shall:

- a. be directly supervised by a paid staff member;
- b. be oriented and trained in the philosophy, policy and procedures of the provider, confidentiality requirements and the needs of clients; and
- c. have documentation of three reference checks.

2. Volunteer/student interns shall be a supplement to staff employed by the provider but shall not provide direct care services to clients.

I. Direct Care Staff Supervisor. The HCBS provider shall designate and assign a direct care staff supervisor to monitor and supervise the direct care staff.

1. The supervisor shall be selected based upon the needs of the client outlined in the ISP.

2. A provider may have more than one direct care staff supervisor.

3. Staff in supervisor positions shall have annual training in supervisory and management techniques.

J. Direct Care Supervision

1. A direct care staff supervisor shall make an in-person supervisory visit of each direct care staff within 60 days of hire and at least annually thereafter. Supervisory visits shall occur more frequently:

- a. if dictated by the ISP;
- b. as needed to address worker performance;
- c. to address a client's change in status; or
- d. to assure services are provided in accordance with the ISP.

2. The supervisory visit shall be unannounced and utilized to evaluate:

- a. the direct care staff's ability to perform assigned duties;
- b. whether services are being provided in accordance with the ISP; and
- c. if goals are being met.

3. Documentation of supervision shall include:

- a. the worker/client relationship;
- b. services provided;
- c. observations of the worker performing assigned duties;
- d. instructions and comments given to the worker during the onsite visit; and
- e. client satisfaction with service delivery.

4. An annual performance evaluation for each direct care staff person shall be documented in his/her personnel record.

5. In addition to the in-person supervisory visits conducted with direct care staff, the provider shall visit the home of each client on a quarterly basis to determine whether the individual:

- a. service plan is adequate;
- b. continues to need the services; and
- c. service plan needs revision.

K. Direct Care Staff Training

1. The provider shall ensure that each direct care staff satisfactorily completes a minimum of 16 hours of training upon hire and before providing direct care and services to clients. Such training shall include the following topics and shall be documented, maintained and readily available in the agency's records:

- a. the provider's policies and procedures;
- b. emergency and safety procedures;
- c. recognizing and responding to medical emergencies that require an immediate call to 911;
- d. client's rights;
- e. detecting and reporting suspected abuse and neglect, utilizing the department's approved training curriculum;
- f. reporting critical incidents;
- g. universal precautions;
- h. documentation;
- i. implementing service plans;
- j. confidentiality;
- k. detecting signs of illness or dysfunction that warrant medical or nursing intervention;

1. basic skills required to meet the health needs and problems of the client; and

m. the management of aggressive behavior, including acceptable and prohibited responses.

2. The provider shall ensure that each direct care staff satisfactorily completes a basic first aid course within 45 days of hire.

L. Competency Evaluation

1. A competency evaluation must be developed and conducted to ensure that each direct care staff, at a minimum, is able to demonstrate competencies in the training areas in §5055.K.

2. Written or oral examinations shall be provided.

3. The examination shall reflect the content and emphasis of the training curriculum components in §5055.K and shall be developed in accordance with accepted educational principles.

4. A substitute examination, including an oral component, will be developed for those direct care staff with limited literacy skills. This examination shall contain all of the content that is included in the written examination and shall also include a written reading comprehension component that will determine competency to read job-related information.

M. Continuing Education

1. Annually thereafter, the provider shall ensure that each direct care staff person satisfactorily completes a minimum of 16 hours of continuing training in order to ensure continuing competence. Orientation and normal supervision shall not be considered for meeting this requirement. This training shall address the special needs of clients and may address areas of employee weakness as determined by the direct care staff's performance reviews.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:79 (January 2012).

§5057. Client Records

A. Client records shall be maintained in the HCBS provider's office. Current progress notes shall be maintained at the home. The provider shall have a written record for each client which shall include:

1. other identifying data including:
 - a. name;
 - b. date of birth;
 - c. address;
 - d. telephone number;
 - e. social security number;
 - f. legal status; and
 - g. proof of interdiction or continuing tutorship, if applicable.
2. a copy of the client's ISP or Medicaid comprehensive plan of care, as well as any modifications or updates to the service plan;
3. the client's history including, where applicable:
 - a. family data;
 - b. next of kin;
 - c. educational background;
 - d. employment record;
 - e. prior medical history; and
 - f. prior service history;
4. the service agreement or comprehensive plan of care;
5. written authorization signed by the client or, where appropriate, the legally responsible person for emergency care;
6. written authorization signed by the client or, where appropriate, the legally responsible person for managing the client's money, if applicable;
7. a full and complete separate accounting of each client's personal funds which includes a written record of all of the financial transactions involving the personal funds of the client deposited with the provider;
 - a. the client (or his legal representative) shall be afforded reasonable access to such record;
 - b. the financial records shall be available through quarterly statements;
 - c. the provider shall safeguard and account for any such funds;
8. required assessment(s) and additional assessments that the provider may have received or is privy to;
9. the names, addresses and telephone numbers of the client's physician(s) and dentist;
10. written progress notes or equivalent documentation and reports of the services delivered for each client for each visit. The written progress notes shall include, at a minimum:
 - a. the date and time of the visit and services;
 - b. the services delivered;
 - c. who delivered or performed the services;
 - d. observed changes in the physical and mental condition(s) of the client, if applicable; and
 - e. doctor appointments scheduled or attended that day;
11. health and medical records of the client, including:
 - a. a medical history, including allergies;
 - b. a description of any serious or life threatening medical condition(s);

c. a description of any medical treatment or medication necessary for the treatment of any medical condition; and

d. physician delegation form for the administration of medication or treatment, if applicable; and

12. a copy of any advance directive that has been provided to the HCBS provider, or any physician orders relating to end of life care and services.

B. HCBS providers shall maintain client records for a period of five years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:82 (January 2012).

§5059. Client Funds and Assets

A. The HCBS provider shall not require that they be the manager of the client's funds and shall develop and implement written policies and procedures to protect client funds.

B. In the case of a representative payee, all social security rules and regulations shall be adhered to.

C. If the provider manages a client's personal funds, the provider must furnish a written statement which includes the client's rights regarding personal funds, a list of the services offered and charges, if any, to the client and/or his/her legal or responsible representative.

D. If a client chooses to entrust funds with the provider, the provider shall obtain written authorization from the client and/or his/her legal or responsible representative for the safekeeping and management of the funds.

E. The provider shall:

1. provide each client with an account statement on a quarterly basis with a receipt listing the amount of money the provider is holding in trust for the client;
2. maintain a current balance sheet containing all financial transactions;
3. provide a list or account statement regarding personal funds upon request of the client;
4. maintain a copy of each quarterly account statement in the client's record;
5. keep funds received from the client for management in a separate account and maintain receipts from all purchases with each receipt being signed by the client and the staff assisting the client with the purchase, or by the staff assisting the client with the purchase and an independent staff when the client is not capable of verifying the purchase; and
6. not commingle the clients' funds with the provider's operating account.

F. A client with a personal fund account managed by the HCBS provider may sign an account agreement acknowledging that any funds deposited into the personal account, by the client or on his/her behalf, are jointly owned by the client and his legal representative or next of kin. These funds do not include Social Security funds that are restricted by Social Security Administration (SSA) guidelines. The account agreement shall state that:

1. the funds in the account shall be jointly owned with the right of survivorship;

2. the funds in the account shall be used by the client or on behalf of the client;

3. the client or the joint owner may deposit funds into the account;

4. the client or joint owner may endorse any check, draft or other instrument to the order of any joint owner, for deposit into the account; and

5. the joint owner of a client's account shall not be an employee of the provider.

G. If the provider is managing funds for a client and he/she is discharged, any remaining funds shall be refunded to the client or his/her legal or responsible representative within five business days of notification of discharge.

H. Distribution of Funds upon the Death of a Client

1. Upon the death of a client, the provider shall act accordingly upon any burial or insurance policies of the client.

2. Unless otherwise provided by state law, upon the death of a client, the provider shall provide the executor or administrator of the client's estate or the client's responsible representative with a complete account statement of the client's funds and personal property being held by the provider.

3. If a valid account agreement has been executed by the client, the provider shall transfer the funds in the client's personal fund account to the joint owner within 30 days of the client's death. This provision only applies to personal fund accounts not in excess of \$2,000.

4. If a valid account agreement has not been executed, the provider shall comply with the federal and state laws and regulations regarding the disbursement of funds in the account and the properties of the deceased. The provider shall comply with R.S. 9:151–181, the Louisiana Uniform Unclaimed Property Act, and the procedures of the Louisiana Department of the Treasury regarding the handling of a deceased client's funds that remain unclaimed.

I. A termination date of the account and the reason for termination shall be recorded on the client's participation file. A notation shall read, "to close account." The endorsed cancelled check with check number noted on the ledger sheet shall serve as sufficient receipt and documentation.

J. Burial or Insurance Policies. Upon discharge of a client, the provider shall release any burial policies or insurance policies to the client or his/her legal or responsible representative.

K. The provisions of this section shall have no effect on federal or state tax obligations or liabilities of the deceased client's estate. If there are other laws or regulations which conflict with these provisions, those laws or regulations will govern over and supersede the conflicting provisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:82 (January 2012).

§5061. Quality Enhancement Plan

A. An HCBS provider shall have a quality enhancement (QE) plan which puts systems in place to effectively identify issues for which quality monitoring, remediation and improvement activities are necessary. The QE plan includes plans of action to correct identified issues including monitoring the effect of implemented changes and making needed revisions to the action plan.

B. The QE program outcomes shall be reported to the administrator for action, as necessary, for any identified systemic problems.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:83 (January 2012).

§5063. Emergency Preparedness

A. A disaster or emergency may be a local, community-wide, regional or statewide event. Disasters or emergencies may include, but are not limited to:

1. tornados;
2. fires;
3. floods;
4. hurricanes;
5. power outages;
6. chemical spills;
7. biohazards;
8. train wrecks; or
9. declared health crisis.

B. Providers shall ensure that each client has an individual plan for dealing with emergencies and disasters and shall assist clients in identifying the specific resources available through family, friends, the neighborhood and the community.

C. Continuity of Operations. The provider shall have an emergency preparedness plan to maintain continuity of the agency's operations in preparation for, during and after an emergency or disaster. The plan shall be designed to manage the consequences of all hazards, declared disasters or other emergencies that disrupt the provider's ability to render care and treatment, or threatens the lives or safety of the clients.

D. The provider shall follow and execute its emergency preparedness plan in the event of the occurrence of a declared disaster or other emergency. The plan shall include, at a minimum:

1. provisions for the delivery of essential services to each client as identified in the individualized emergency plan for each client, whether the client is in a shelter or other location;
2. provisions for the management of staff, including provisions for adequate, qualified staff as well as for distribution and assignment of responsibilities and functions;
3. provisions for back-up staff;
4. the method that the provider will utilize in notifying the client's family or caregiver if the client is evacuated to another location either by the provider or with the assistance or knowledge of the provider. This notification shall include:
 - a. the date and approximate time that the facility or client is evacuating;
 - b. the place or location to which the client(s) is evacuating which includes the name, address and telephone number; and
 - c. a telephone number that the family or responsible representative may call for information regarding the provider's evacuation;
5. provisions for ensuring that supplies, medications, clothing and a copy of the service plan are sent with the client, if the client is evacuated; and
6. the procedure or methods that will be used to ensure that identification accompanies the individual. The identification shall include the following information:

- a. current and active diagnosis;
- b. medication, including dosage and times administered;
- c. allergies;
- d. special dietary needs or restrictions; and
- e. next of kin, including contact information.

E. If the state, parish or local Office of Homeland Security and Emergency Preparedness (OHSEP) orders a mandatory evacuation of the parish or the area in which the agency is serving, the agency shall ensure that all clients are evacuated according to the client's individual plan and the agency's emergency preparedness plan.

1. The provider shall not abandon a client during a disaster or emergency. The provider shall not evacuate a client to a shelter without ensuring staff and supplies remain with the client at the shelter, in accordance with the client's service plan.

F. Emergency Plan Review and Summary. The provider shall review and update its emergency preparedness plan, as well as each client's emergency plan at least annually.

G. The provider shall cooperate with the department and with the local or parish OHSEP in the event of an emergency or disaster and shall provide information as requested.

H. The provider shall monitor weather warnings and watches as well as evacuation order from local and state emergency preparedness officials.

I. All agency employees shall be trained in emergency or disaster preparedness. Training shall include orientation, ongoing training and participation in planned drills for all personnel.

J. Upon request by the department, the HCBS shall submit a copy of its emergency preparedness plan and a written summary attesting how the plan was followed and executed. The summary shall contain, at a minimum:

- 1. pertinent plan provisions and how the plan was followed and executed;
- 2. plan provisions that were not followed;
- 3. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;
- 4. contingency arrangements made for those plan provisions not followed; and
- 5. a list of all injuries and deaths of clients that occurred during execution of the plan, evacuation or temporary relocation including the date, time, causes and circumstances of the injuries and deaths.

K. Inactivation of License due to a Declared Disaster or Emergency.

1. An HCBS provider licensed in a parish which is the subject of an executive order or proclamation of emergency or disaster, as issued in accordance with R.S. 29:724 or R.S. 29:766 may seek to inactivate its license for a period not to exceed one year, provided that the following conditions are met:

- a. the licensed provider shall submit written notification to the Health Standards Section within 60 days of the date of the executive order or proclamation of emergency or disaster that:
 - i. the HCBS provider has experienced an interruption in the provisions of services as a result of events that are the subject of such executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766;

- ii. the licensed HCBS provider intends to resume operation as an HCBS provider in the same service area;
- iii. includes an attestation that the emergency or disaster is the sole casual factor in the interruption of the provision of services;

iv. includes an attestation that all clients have been properly discharged or transferred to another provider; and

v. provides a list of each client and where that client is discharged or transferred to;

b. the licensed HCBS provider resumes operating as a HCBS provider in the same service area within one year of the issuance of an executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766;

c. the licensed HCBS provider continues to pay all fees and cost due and owed to the department including, but not limited to, annual licensing fees and outstanding civil monetary penalties; and

d. the licensed HCBS provider continues to submit required documentation and information to the department.

2. Upon receiving a completed written request to inactivate a HCBS provider license, the department shall issue a notice of inactivation of license to the HCBS provider.

3. Upon completion of repairs, renovations, rebuilding or replacement, an HCBS provider which has received a notice of inactivation of its license from the department shall be allowed to reinstate its license upon the following conditions being met.

a. The HCBS provider shall submit a written license reinstatement request to the licensing agency of the department 60 days prior to the anticipated date of reopening.

b. The license reinstatement request shall inform the department of the anticipated date of opening, and shall request scheduling of a licensing survey.

c. The license reinstatement request shall include a completed licensing application with appropriate licensing fees.

d. The provider resumes operating as an HCBS provider in the same service area within one year.

4. Upon receiving a completed written request to reinstate an HCBS provider license, the department shall conduct a licensing survey. If the HCBS provider meets the requirements for licensure and the requirements under this Section, the department shall issue a notice of reinstatement of the HCBS provider license.

a. The licensed capacity of the reinstated license shall not exceed the licensed capacity of the HCBS provider at the time of the request to inactivate the license.

5. No change of ownership in the HCBS provider shall occur until such HCBS provider has completed repairs, renovations, rebuilding or replacement construction, and has resumed operations as an HCBS provider.

6. The provisions of this Section shall not apply to an HCBS provider which has voluntarily surrendered its license and ceased operation.

7. Failure to comply with any of the provisions of this Section shall be deemed a voluntary surrender of the HCBS provider license and any applicable facility need review approval for licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:83 (January 2012).

Subchapter G. Adult Day Care Module

§5071. General Provisions

A. Providers applying for the Adult Day Care module under the HCBS license shall meet the core licensing requirements as well as the module specific requirements of this Section.

B. Adult Day Care is designed to meet the individual needs of functionally impaired adults. This is a structured and comprehensive group program which provides a variety of health, social, and related support services in a protective setting for a portion of the 24-hour day.

C. An ADC program shall provide services for 10 or more functionally impaired adults who are not related to the owner or operator of the HCBS provider.

1. For the purposes of this Section, “*functionally impaired adult*” shall be defined as individuals 17 years of age or older who are physically, mentally or socially impaired to a degree that requires supervision.

D. The following two programs shall be provided under the ADC Module:

1. Day Habilitation Services

a. Day habilitation services include assistance with acquisition, retention or improvement in self-help, socialization, and adaptive skills that take place in a non-residential setting separate from the recipient’s private residence or other residential living arrangement. Day habilitation services provide activities and environments designed to foster the acquisition of skills, appropriate behavior, greater independence and personal choice.

b. Services are furnished to a client who is 17 years of age or older and has a developmental disability, or who is a functionally impaired adult, on a regularly scheduled basis during normal daytime working hours for one or more days per week, or as specified in the recipient’s service plan.

c. Day habilitation services focus on enabling the recipient to attain or maintain his or her maximum functional level, and shall be coordinated with any physical, occupational, or speech therapies in the service plan. These services may also serve to reinforce skills or lessons taught in other settings.

2. Prevocational/Employment-Related Services

a. Prevocational/employment-related services prepare a recipient for paid or unpaid employment. Services include teaching such concepts as compliance, attendance, task completion, problem solving and safety. Services are not job-task oriented, but are aimed at a generalized result. These services are reflected in the recipient’s service plan and are directed to habilitative (e.g. attention span, motor skills) rather than explicit employment objectives.

b. Prevocational services are provided to clients who are not expected to join the general work force or participate in a transitional sheltered workshop within one year of service initiation.

c. This service is not available to clients eligible to receive services under a program funded under the Rehabilitation Act of 1973 or the IDEA.

E. When applying for the ADC module under the HCBS provider license, the provider shall indicate whether it is

providing day habilitation, prevocational/employment-related services or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:85 (January 2012).

§5073. Operational Requirements for ADC Facilities

A. The client/staff ratio in an ADC facility shall be one staff person per eight clients, unless additional staff coverage is needed to meet the needs of the client, as specified in the service plan.

B. Staff Training

1. ADC Staff in supervisory positions shall have annual training in supervisory and management techniques.

2. Each ADC facility shall have a training supervisor who shall receive at least 15 hours of annual vocational and/or community-based employment training.

3. Once the training supervisor receives all of the required training, he/she shall be responsible for ensuring that direct care staff receives training on vocational and/or community-based employment training.

C. Food and Nutrition

1. If meals are prepared by the facility or contracted from an outside source, the following conditions shall be met:

a. menus shall be written in advance and shall provide for a variety of nutritional foods;

b. records of menus, as served, shall be filed and maintained for at least 30 days;

c. modified diets shall be prescribed by a physician;

d. only food and drink of safe quality shall be purchased;

e. storage, preparation, and serving techniques shall be provided to ensure nutrients are retained and spoilage is prevented;

f. food preparation areas and utensils shall be kept clean and sanitary;

g. there shall be an adequate area for eating; and

h. the facility shall designate one staff member who shall be responsible for meal preparation/serving if meals are prepared in the facility.

2. When meals are not prepared by the facility, the following conditions shall be met:

a. provisions shall be made for obtaining food for clients who do not bring their lunch; and

b. there shall be an adequate area for eating.

3. Drinking water shall be readily available. If a water fountain is not available, single-use disposable cups shall be used.

4. Dining areas shall be adequately equipped with tables, chairs, eating utensils and dishes designed to meet the functional needs of clients.

5. Adequate refrigeration of food shall be maintained.

D. General Safety Practices

1. A facility shall not maintain any firearms or chemical weapons at any time.

2. A facility shall ensure that all poisonous, toxic and flammable materials are safely secured and stored in appropriate containers and labeled as to the contents. Such materials shall be maintained only as necessary and shall be used in such a manner as to ensure the safety of clients, staff and visitors.

3. Adequate supervision/training shall be provided where potentially harmful materials such as cleaning solvents and/or detergents are used.

4. A facility shall ensure that a first aid kit is available in the facility and in all vehicles used to transport clients.

5. Medication shall be locked in a secure storage area or cabinet.

6. Fire drills shall be performed at least once a month.

E. Physical Environment

1. The ADC building shall be constructed, equipped and maintained to ensure the safety of all individuals. The building shall be maintained in good repair and kept free from hazards such as those created by any damage or defective parts of the building.

2. The provider shall maintain all areas of the facility that are accessible to individuals, and ensure that all structures on the ground of the facility are in good repair and kept free from any reasonable foreseeable hazards to health or safety.

3. The facility shall be accessible to and functional for those cared for, the staff and the public. All necessary accommodations shall be made to meet the needs of clients. Training or supports shall be provided to help clients effectively negotiate their environments.

4. There shall be a minimum of 35 square feet of space per client. Kitchens, bathrooms and halls used as passageways, and other spaces not directly associated with program activities, shall not be considered as floor space available to clients.

5. There shall be storage space, as needed by the program, for training and vocational materials, office supplies, and client's personal belongings.

6. Rooms used for recipient activities shall be well ventilated and lighted.

7. Chairs and tables shall be adequate in number to serve the clients.

8. Bathrooms and lavatories shall be accessible, operable and equipped with toilet paper, soap and paper towels or hand drying machines.

a. The ratio of bathrooms to number of clients shall meet the requirements in Table 407 of the State Plumbing Code.

b. Individuals shall be provided privacy when using bathroom facilities.

c. Every bathroom door shall be designed to permit opening of the locked door from the outside, in an emergency, and the opening device shall be readily accessible to the staff.

9. Stairways shall be kept free of obstruction and fire exit doors shall be maintained in working order. All stairways shall be equipped with handrails.

10. There shall be a telephone available and accessible to all clients.

11. The ADC shall be equipped with a functional air conditioning and heating unit(s) which maintains an ambient temperature between 65 and 80 degrees Fahrenheit throughout the ADC or in accordance with industry standards, if applicable.

12. The building in which the ADC is located shall meet the standards of the Americans with Disabilities Act.

F. Employment of Clients

1. The provider shall meet all of the state and federal wage and hour regulations regarding employment of clients who are admitted to the agency.

a. The provider must maintain full financial records of clients' earnings if the facility pays the client.

b. The provider shall have written assurance that the conditions and compensation of work are in compliance with applicable state and federal employment regulations.

c. The provider must have a U.S. Department of Labor Sub-Minimum Wage Certificate if the provider pays sub-minimum wage.

2. Clients shall not be required to perform any kind of work involving the operation or maintenance of the facility without compensation in accordance with the U.S. Department of Labor sub-minimum standard.

3. Clients shall be directly supervised when operating any type of power driven equipment such as lawn mowers or electrical saws, unless:

a. the ID team has determined that direct supervision is not necessary;

b. equipment has safety guards or devices; and

c. adequate training is given to the recipient and the training is documented.

4. Clients shall be provided with the necessary safety apparel and safety devices to perform the job.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:85 (January 2012).

Subchapter H. Family Support Module

§5075. General Provisions

A. Providers applying for the Family Support module under the HCBS license shall meet the core licensing requirements as well as the module specific requirements of this Section.

B. The purpose of family support services is to:

1. keep the family of a person with a disability together by promoting unity, independence of the family in problem solving and maintenance of the family as the primary responsible caretaker;

2. determine if barriers to home placement for persons with a disability can be eliminated or relocated through financial assistance for purchases, special equipment and supplies;

3. allow a person with a disability to remain in or return to a family setting as an alternative to placement in a more restrictive setting; and

4. link families of a person with a disability to existing support services and to supplement those services where necessary (i.e. transportation to reach services when not otherwise provided).

C. Services covered by the family support module may include:

1. special equipment;

2. limited adaptive housing;

3. medical expenses and medications;

4. nutritional consultation and regime;

5. related transportation;

6. special clothing;

7. special therapies;
8. respite care;
9. dental care; and
10. family training and therapy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:86 (January 2012).

§5077. Operational Requirements for Family Support Providers

A. Providers shall ensure that each family receiving services is assigned a service coordinator.

B. The service coordinator shall perform the following tasks:

1. prepare a family study, based on a home visit interview with the client, in order to ascertain what appropriate family support services may be provided;
2. visit each client at least quarterly;
3. maintain documentation of all significant contacts; and
4. review and evaluate, at least every six months, the care, support and treatment each client is receiving.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:87 (January 2012).

Subchapter I. Personal Care Attendant Module

§5079. General Provisions

A. Providers applying for the Personal Care Attendant module under the HCBS license shall meet the core licensing requirement as well as the module specific requirements of this Section.

B. Personal care attendant services may include:

1. assistance and prompting with:
 - a. personal hygiene;
 - b. dressing;
 - c. bathing;
 - d. grooming;
 - e. eating;
 - f. toileting;
 - g. ambulation or transfers;
 - h. behavioral support;
 - i. other personal care needs; and
 - j. any medical task which can be delegated;
2. assistance and/or training in the performance of tasks related to:
 - a. maintaining a safe and clean home environment such as housekeeping, bed making, dusting, vacuuming and laundry;
 - b. cooking;
 - c. shopping;
 - d. budget management;
 - e. bill paying; and
 - f. evacuating the home in emergency situations;
3. personal support and assistance in participating in community, health and leisure activities which may include transporting and/or accompanying the participant to these activities;
4. support and assistance in developing relationships with neighbors and others in the community and in

strengthening existing informal, social networks and natural supports; and

5. enabling and promoting individualized community supports targeted toward inclusion into meaningful, integrated experiences (e.g. volunteer work and community awareness) activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:87 (January 2012).

§5081. Operational Requirements for PCA Providers

A. PCA providers shall schedule personal care attendant staff in the manner and location as required by each client's ISP.

B. PCA providers shall have a plan that identifies at least one trained and qualified back-up worker for each client served.

1. It is the responsibility of the provider to ensure that a trained and qualified back-up worker is available as needed to meet the requirements of the ISP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORY NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:87 (January 2012).

Subchapter J. Respite Care

§5083. General Provisions

A. Providers applying for the Respite Care module under the HCBS license shall meet the core licensing requirement as well as the applicable module specific requirements of this Section.

B. The goal of respite care is to provide temporary, intermittent relief to informal caregivers in order to help prevent unnecessary or premature institutionalization while improving the overall quality of life for both the informal caregiver and the client.

C. Respite care may be provided as an in-home or center-based service. The services may be provided in the client's home or in a licensed respite center.

D. Providers of in-home respite care services must comply with:

1. all HCBS providers core licensing requirements;
2. PCA module specific requirements; and
3. the respite care services module in-home requirements.

E. Providers of center-based respite care services must comply with:

1. all HCBS providers core licensing requirements;
2. respite care services module in-home requirements; and
3. respite care services module center-based requirements.

F. When applying for the respite care service module under the HCBS provider license, the provider shall indicate whether it is providing in-home respite care, center-based respite care or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:87 (January 2012).

§5085. Operational Requirements for In-Home Respite Care

A. All in-home respite care service providers shall:

1. make available to clients, the public and HSS the day and hours that respite is to be provided;
2. make available to clients, the public and HSS a detailed description of populations served as well as services and programming; and

B. In-home respite care service providers shall have adequate administrative, support, professional and direct care staff to meet the needs of clients at all times.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:88 (January 2012).

§5087. Operational Requirements for Center-Based Respite Care

A. All center-based respite care service providers shall meet the following daily aspects of care.

1. The daily schedule shall be developed in relation to the needs of the clients.
2. Clients shall be assisted in ADL's as needed.
 - a. The provider shall ensure that the family supplies the client with his/her own clothing.
3. The provider shall make available to each client an adequate number of supervised recreational activities.

B. All center-based respite care service providers shall meet the following health aspects of care.

1. Responsibility for the health supervision of the client shall be placed with the client's personal physician.
 - a. The provider shall have written agreements for obtaining diagnosis and treatment of medical and dental problems for clients who do not have a personal physician. This agreement can be with a local hospital, clinic or physician.
2. Arrangements for medical isolation shall be available. The provider shall inform the family to remove the client when necessary.
3. Medication shall be prescribed only by a licensed physician.

C. Food and Nutrition

1. Planning, preparation and serving of foods shall be in accordance with the nutritional, social, emotional and medical needs of the clients. The diet shall include a variety of food, and be attractively served. Clients shall be encouraged, but not forced, to eat all of the food served.
2. Food provided shall be of adequate quality and in sufficient quantity to provide the nutrients for proper growth and development.
3. Clients shall be provided a minimum of three meals daily, plus snacks.
4. All milk and milk products used for drinking shall be Grade A and pasteurized.
5. There shall be no more than 14 hours between the last meal or snack on one day and the first meal of the following day.

D. The provider shall request from the family that all clients over five years of age have money for personal use. Money received by a client shall be his own personal property and shall be accounted for separately from the provider's funds.

E. Privacy

1. The HCBS provider staff shall function in a manner that allows appropriate privacy for each client.
2. The space and furnishings shall be designed and planned to enable the staff to respect the clients' right to privacy and at the same time provide adequate supervision according to the ages and developmental needs of the client.
3. The provider shall not use reports or pictures, nor release (or cause to be released) research data, from which clients can be identified without written consent from the client, parents or legal guardians.

F. Contact with Family, Friends and Representatives

1. Clients in care shall be allowed to send and receive uncensored mail and conduct private telephone conversations with family members.
2. If it has been determined that the best interests of the client necessitate restrictions on communications or visits, these restrictions shall be documented in the service plan.
3. If limits on communication or visits are indicated for practical reasons, such as expense of travel or telephone calls, such limitations shall be determined with the participation of the client and family.

G. Furnishings and Equipment

1. Furnishings and equipment shall be adequate, sufficient and substantial for the needs of the age groups in care.
2. All bedrooms shall be on or above street grade level and be outside rooms. Bedrooms shall accommodate no more than four residents. Bedrooms must provide at least 60 square feet per person in multiple sleeping rooms and not less than 80 square feet in single rooms.
3. Each resident shall be provided a separate bed of proper size and height, a clean, comfortable mattress and bedding appropriate for weather and climate.
4. There shall be separate sleeping rooms for adults and for adolescents. When possible, there should be individual sleeping rooms for clients whose behavior would be upsetting to others.
5. Appropriate furniture shall be provided, such as a chest of drawers, a table or desk, an individual closet with clothes racks and shelves accessible to the residents.
6. Individual storage space reserved for the client's exclusive use shall be provided for personal possessions such as clothing and other items so that they are easily accessible to the resident during his/her stay.

H. Bath and Toilet Facilities

1. There shall be a separate toilet/bathing area for males and females beyond pre-school age. The provider shall have one toilet/bathing area for each eight clients admitted, but in no case shall have less than two toilet/bathing areas.
2. Toilets should be convenient to sleeping rooms and play rooms.
3. Toilets, bathtubs and showers shall provide for individual privacy unless specifically contraindicated for the individual, as stated in the service plan.
4. Bath/toilet area shall be accessible, operable and equipped with toilet paper, soap and paper towels or hand drying machines.
5. Every bath/toilet shall be wheelchair accessible.

6. Individuals shall be provided privacy when using a bath/toilet area.

7. Every bath/toilet area door shall be designed to permit opening of the locked door from the outside, in an emergency. The opening device shall be readily accessible to the staff.

I. There shall be a designated space for dining. Dining room tables and chairs shall be adjusted in height to suit the ages of the clients.

J. Heat and Ventilation

1. The temperature shall be maintained within a reasonable comfort range (65 to 80 degrees Fahrenheit).

2. Each habitable room shall have access to direct outside ventilation by means of windows, louvers, air conditioner, or mechanical ventilation horizontally and vertically.

K. Health and Safety

1. The facility shall comply with all applicable building codes, fire and safety laws, ordinances and regulations.

2. Secure railings shall be provided for flights of more than four steps and for all galleries more than four feet from the ground.

3. Where clients under age two are in care, gates shall be provided at the head and foot of each flight of stairs accessible to these clients.

4. Before swimming pools are made available for client use, written documentation must be received by DHH confirming that the pool meets the requirements of the Virginia Graeme Baker Pool and Spa Safety Act of 2007 or, in lieu of, written documentation confirming that the pool meets the requirements of ANSI/APSP-7 (2006 Edition) which is entitled the "American National Standard for Suction Entrapment Avoidance in Swimming Pools, Wading pools, Spas, Hot Tubs and Catch Basins."

a. An outdoor swimming pool shall be enclosed by a six foot high fence. All entrances and exits to pools shall be closed and locked when not in use. Machinery rooms shall be locked to prevent clients from entering.

b. An individual, 18 years of age or older, shall be on duty when clients are swimming in ponds, lakes or pools where a lifeguard is not on duty. The individual is to be certified in water safety by the American Red Cross.

c. There shall be written plans and procedures for water safety.

5. Storage closets or chests containing medicine or poisons shall be securely locked.

6. Garden tools, knives and other dangerous instruments shall be inaccessible to clients without supervision.

7. Electrical devices shall have appropriate safety controls.

L. Maintenance

1. Buildings and grounds shall be kept clean and in good repair.

2. Outdoor areas shall be well drained.

3. Equipment and furniture shall be safely and sturdily constructed and free of hazards to clients and staff.

4. The arrangement of furniture in living areas shall not block exit ways.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:88 (January 2012).

Subchapter K. Substitute Family Care Module

§5089. General Provisions

A. Providers applying for the Substitute Family Care module under the HCBS license shall meet the core licensing requirements as well as the module specific requirements of this Section. In addition to complying with the appropriate licensing regulations, SFC providers shall also establish:

1. an advisory committee comprised of persons with developmental disabilities and their families to provide guidance on the aspirations of persons with developmental disabilities who live in home and community settings;

2. a medical decision-making committee for each SFC client who is unable to give informed consent for surgical or medical treatment which shall fulfill the requirements for executing medical decision-making for those clients as required by R.S. 40.1299.53 or its successor statute.

B. Substitute family care services provide 24-hour personal care, supportive services, and supervision to adults who meet the criteria for having a developmental disability.

C. The SFC Program is designed to:

1. support individuals with developmental disabilities in a home environment in the community through an array of naturally occurring and arranged community resources similar to those enjoyed by most individuals living in the community in all stages of life;

2. expand residential options for persons with developmental disabilities;

a. this residential option also takes into account compatibility of the substitute family and the participant, including individual interests, age, health, needs for privacy, supervision and support needs;

3. provide meaningful opportunities for people to participate in activities of their choosing whereby creating a quality of life not available in other settings.

4. serve persons who require intensive services for medical, developmental or psychological challenges.

a. The SFC provider is required to provide the technical assistance, professional resources and more intensive follow-up to assure the health, safety and welfare of the client(s).

D. Substitute family care services are delivered by a principal caregiver, in the caregiver's home, under the oversight and management of a licensed SFC provider.

1. The SFC caregiver is responsible for providing the client with a supportive family atmosphere in which the availability, quality and continuity of services are appropriate to the age, capabilities, health conditions and special needs of the individual.

2. The licensed SFC provider shall not be allowed to serve as the SFC caregiver.

E. Potential clients of the SFC program shall meet the following criteria:

1. have a developmental disability as defined in R.S. 28:451.1-455.2 of the Louisiana Developmental Disability Law or its successor statute;

2. be at least 18 years of age; and

3. have an assessment and service plan pursuant to the requirements of the HCBS provider licensing rule.

a. The assessment and service plan shall assure that the individual's health, safety and welfare needs can be met in the SFC setting.

F. SFC Caregiver Qualifications

1. An SFC caregiver shall be certified by the SFC provider before any clients are served. In order to be certified, the SFC caregiver applicant shall:

- a. undergo a professional home study;
- b. participate in all required orientations, trainings, monitoring and corrective actions required by the SFC provider; and
- c. meet all of the caregiver specific requirements of this Section.

2. The personal qualifications required for certification include:

a. **Residency.** The caregiver shall reside in the state of Louisiana and shall provide SFC services in the caregiver's home. The caregiver's home shall be located in the state of Louisiana and in the region in which the SFC provider is licensed.

b. **Criminal Record and Background Clearance.** Members of the SFC caregiver's household shall not have any felony convictions. Other persons approved to provide care or supervision of the SFC client for the SFC caregiver shall not have any felony convictions.

i. Prior to certification, the SFC caregiver, all members of the SFC caregiver applicant's household and persons approved to provide care or supervision of the SFC client on a regular or intermittent basis, shall undergo a criminal record and background check.

ii. Annually thereafter, the SFC caregiver, all members of the SFC caregiver applicant's household and persons approved to provide care or supervision of the SFC client on a regular or intermittent basis, shall have background checks.

c. **Age.** The SFC principal caregiver shall be at least 21 years of age. Maximum age of the SFC principal caregiver shall be relevant only as it affects his/her ability to provide for the SFC client as determined by the SFC provider through the home assessment. The record must contain proof of age.

3. The SFC caregiver may be either single or married. Evidence of marital status must be filed in the SFC provider's records and may include a copy of legal documents adequate to verify marital status.

4. The SFC caregiver is not prohibited from employment outside the home or from conducting a business in the home provided that:

- a. the SFC home shall not be licensed as another healthcare provider;
- b. such employment or business activities do not interfere with the care of the client;
- c. such employment or business activities do not interfere with the responsibilities of the SFC caregiver to the client;

d. a pre-approved, written plan for supervision of the participant which identifies adequate supervision for the participant is in place; and

e. the plan for supervision is signed by both the SFC caregiver and the administrator or designee of the SFC provider.

G. The SFC caregiver shall not be certified as a foster care parent(s) for the Department of Social Services (DSS) while serving as a caregiver for a licensed SFC provider.

1. The SFC provider, administrator or designee shall request confirmation from DSS that the SFC caregiver applicant is not presently participating as a foster care parent and document this communication in the SFC provider's case record.

H. In addition to the discharge criteria in the core requirements, the client shall be discharged from the SFC program upon the client meeting any of the following criteria:

1. incarceration or placement under the jurisdiction of penal authorities or courts for more than 30 days;

2. lives in or changes his/her residence to another region in Louisiana or another state;

3. admission to an acute care hospital, rehabilitation hospital, intermediate care facility for persons with developmental disabilities (ICF/DD) or nursing facility with the intent to stay longer than 90 consecutive days;

4. the client and/or his legally responsible party(s) fails to cooperate in the development or continuation of the service planning process or service delivery;

5. a determination is made that the client's health and safety cannot be assured in the SFC setting; or

6. failure to participate in SFC services for 30 consecutive days for any reason other than admission to an acute care hospital, rehabilitation hospital, ICF/DD facility or nursing facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:89 (January 2012).

§5090. Operational Requirements for Substitute Family Care Providers

A. Training

1. Prior to the introduction of an SFC client into a SFC home, the SFC provider shall ensure that the caregiver receives a minimum of six hours of training designed to assure the health and safety of the client, including any areas relevant to the SFC client's support needs.

a. The provider shall also conduct a formal review of the SFC client's support needs, particularly regarding medical and behavioral concerns as well as any other pertinent areas.

2. Within the first 90 days following the client's move into the home, the SFC provider shall provide and document training to the SFC caregiver(s) on:

- a. the client's support plan and the provider's responsibilities to assure successful implementation of the plan;
- b. emergency plans and evacuation procedures;
- c. client rights and responsibilities; and
- d. any other training deemed necessary to support the person's individual needs.

3. Annually, the SFC provider shall provide the following training to the SFC caregiver:

a. six hours of approved training related to the client's needs and interests including the client's specific priorities and preferences; and

b. six hours of approved training on issues of health and safety such as the identification and reporting of allegations of abuse, neglect or exploitation.

4. On an as needed basis the SFC provider shall provide the SFC caregiver with additional training as may be deemed necessary by the provider.

B. Supervision and Monitoring. The SFC provider shall provide ongoing supervision of the SFC caregiver to ensure quality of services and compliance with licensing standards. Ongoing supervision and monitoring shall consist of the following.

1. The SFC provider shall conduct in-person monthly reviews of each SFC caregiver and/or household in order to:

a. monitor the health and safety status of the client through visits;

i. more frequent visits shall be made when concerns are identified;

b. monitor the implementation of the client's service plan to ensure that it is effective in promoting accomplishment of the client's goals;

c. assure that all services included in the service plan are readily available and utilized as planned;

d. assure that the objectives of the medical, behavioral or other plans are being accomplished as demonstrated by the client's progress; and

e. resolve discrepancies or deficiencies in service provision.

2. The SFC provider shall conduct annual reviews of each SFC caregiver and/or household in order to assure the annual certification relating to health, safety and welfare issues and the client's adjustment to the SFC setting. The annual review shall include:

a. written summaries of the SFC caregiver's performance of responsibilities and care for the client(s) placed in the home;

b. written evaluation of the strengths and needs of the SFC home and the client's relationship with the SFC caregiver, including the goals and future performance;

c. review of all of the licensing standards to ensure compliance with established standards;

d. review of any concerns or the need for corrective action, if indicated; and

e. complete annual inventory of the client's possessions.

C. The SFC provider shall assure the following minimum services are provided by the SFC caregiver:

1. 24-hour care and supervision, including provisions for:

a. a flexible, meaningful daily routine;

b. household tasks;

c. food and nutrition;

d. clothing;

e. care of personal belongings;

f. hygiene; and

g. routine medical and dental care;

2. room and board;

3. routine and reasonable transportation;

4. assurance of minimum health, safety and welfare needs;

5. participation in school, work or recreational/leisure activities, as appropriate;

6. access to a 24-hour emergency response through written emergency response procedures for handling emergencies and contact numbers for appropriate staff for after hours; and

a. For purposes of these provisions, after hours shall include holidays, weekends, and hours between 4:31 p.m. and 7:59 a.m. on Monday through Friday;

7. general supervision of personal needs funds retained for the client's use if specified in the service plan.

D. Client Records

1. SFC Providers shall ensure that the SFC caregiver complies with the following standards for client records.

a. Information about clients and services of the contract agency shall be kept confidential and shared with third parties only upon the written authorization of the client or his/her authorized representative, except as otherwise specified in law.

b. The SFC caregiver shall make all client records available to the department or its designee and any other state or federal agency having authority to review such records.

c. The SFC caregiver shall ensure the privacy of the client's protected health information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:90 (January 2012).

§5091. Operational Requirements for Substitute Family Care Caregivers

A. The SFC caregiver(s) shall provide adequate environments that meet the needs of the clients.

B. The SFC caregiver's home shall be located within a 25 mile radius of community facilities, resources and services such as medical care, schools, recreation facilities, churches and other community facilities, unless a waiver is granted by the department.

C. The home of the SFC family shall not be used as lodging for any person(s) who is not subject to the prior approval certification process of the SFC family. The SFC family shall notify the administrator, or designee of the SFC provider, of any person(s) allowed to live in the home following the initial certification.

1. In a non-emergent situation, prior notification is required. In an emergent situation, notification shall be made within 48 hours of the additional person's move into the substitute's family home.

2. All persons residing with the SFC family, even on a non-permanent basis, shall undergo criminal record and background checks.

3. The SFC family shall accept persons requiring care or supervision only through the SFC provider with whom they have a current contract.

D. The SFC caregiver shall care for no more than two SFC clients in the caregiver's home. The SFC caregiver shall allow no more than three persons unrelated to the principal caregiver to live in the home. These three persons include the SFC clients.

E. The SFC caregiver shall have a stable income sufficient to meet routine expenses, independent of the payments for their substitute family care services, as

demonstrated by a reasonable comparison between income and expenses conducted by the administrator or designee of the SFC provider.

F. The SFC caregiver must have a plan that outlines in detail the supports to be provided. This plan shall be approved and updated as required by the SFC provider. The SFC caregiver shall allow only approved persons to provide care or supervision to the SFC client.

1. An adequate support system for the supervision and care of the participant in both on-going and emergent situations shall include:

a. identification of any person(s) who will supervise the participant on a regular basis which must be prior approved by the administrator or designee of the SFC agency provider;

b. identification of any person(s) who will supervise for non-planned (emergency) assumption of supervisory duties who has not been previously identified and who shall be reported to the agency provider administrator or designee within 12 hours; and

c. established eligibility for available and appropriate community resources.

G. The SFC caregiver and/or household shall receive referrals only from the licensed SFC provider with whom it has a contract.

H. SFC Caregiver's Home Environment

1. The home of the SFC caregiver shall be safe and in good repair, comparable to other family homes in the neighborhood. The home and its exterior shall be free from materials and objects which constitute a danger to the individual(s) who reside in the home.

2. SFC homes featuring either a swimming or wading pool must ensure that safety precautions prevent unsupervised accessibility to clients.

3. The home of the SFC caregiver shall have:

a. functional air conditioning and heating units which maintain an ambient temperature between 65 and 80 degrees Fahrenheit;

b. a working telephone;

c. secure storage of drugs and poisons;

d. secure storage of alcoholic beverages;

e. pest control;

f. secure storage of fire arms and ammunition;

g. household first aid supplies to treat minor cuts or burns;

h. plumbing in proper working order and availability of a method to maintain safe water temperatures for bathing; and

i. a clean and sanitary home, free from any health and/or safety hazards.

4. The SFC home shall be free from fire hazards such as faulty electrical cords, faulty appliances and non-maintained fireplaces and chimneys, and shall have the following:

a. operating smoke alarms within 10 feet of each bedroom;

b. portable chemical fire extinguishers located in the kitchen area of the home;

c. posted emergency evacuation plans which shall be practiced at least quarterly; and

d. two unrestricted doors which can be used as exits.

5. The SFC home shall maintain environments that meet the following standards.

a. There shall be a bedroom for each client with at least 80 square feet exclusive of closets, vestibules and bathrooms and equipped with a locking door, unless contraindicated by any condition of the client.

i. The department may grant a waiver from individual bedroom and square feet requirements upon good cause shown, as long as the health, safety and welfare of the client are not at risk.

b. Each client shall have his own bed unit, including frame, which is appropriate to his/her size and is fitted with a non-toxic mattress with a water proof cover.

c. Each client shall have a private dresser or similar storage area for personal belongings that is readily accessible to the client.

d. There shall be a closet, permanent or portable, to store clothing or aids to physical functioning, if any, which is readily accessible to the client.

e. The client shall have access to a working telephone.

f. The home shall have one bathroom for every two members of the SFC household, unless waived by the department.

g. The home shall have cooking and refrigeration equipment and kitchen and or dining areas with appropriate furniture that allows the client to participate in food preparation and family meals.

h. The home shall have sufficient living or family room space, furnished comfortably and accessible to all members of the household.

i. The home shall have adequate light in each room, hallway and entry to meet the requirements of the activities that occur in those areas.

j. The home shall have window coverings to ensure privacy.

I. Automobile Insurance and Safety Requirements

1. Each SFC caregiver shall have a safe and dependable means of transportation available as needed for the client.

2. The SFC caregiver shall provide the following information to the SFC provider who is responsible for maintaining copies in its records:

a. current and valid driver's licenses of persons routinely transporting the client;

b. current auto insurance verifications demonstrating at least minimal liability insurance coverage;

c. documentation of visual reviews of current inspection stickers; and

d. documentation of a driving history report on each family member who will be transporting the client.

3. If the client(s) are authorized to operate the family vehicle, sufficient liability insurance specific to the client(s) use shall be maintained at all times.

J. Client Records

1. The SFC caregiver shall forward all client records, including progress notes and client service notes to the SFC provider on a monthly basis. The following information shall be maintained in the client records in the SFC caregiver's home:

a. client's name, sex, race and date of birth;

- b. client's address and the telephone number of the client's current place of employment, school or day provider;
- c. clients' Medicaid/Medicare and other insurance cards and numbers;
- d. client's social security number and legal status;
- e. name and telephone number of the client's preferred hospital, physician and dentist ;
- f. name and telephone number of the closest living relative or emergency contact person for the client;
- g. preferred religion (optional) of the client;
- h. Medicaid eligibility information;
- i. medical information, including, but not limited to:

- i. current medications, including dosages, frequency and means of delivery;
- ii. the condition for which each medication is prescribed; and
- iii. allergies;
- j. identification and emergency contact information on persons identified as having authority to make emergency medical decisions in the case of the individual's inability to do so independently;
- k. progress notes written on at least a monthly basis summarizing services and interventions provided and progress toward service objectives; and
- i. Checklists alone are not adequate documentation for progress notes;
- l. a copy of the client's ISP and any vocational and behavioral plans.

2. Each SFC family shall have documentation attesting to the receipt of an adequate explanation of:
 - a. the client's rights and responsibilities;
 - b. grievance procedures;
 - c. critical incident reports; and
 - d. formal grievances filed by the client.

3. All records maintained by the SFC caregiver shall clearly identify the:
 - a. date the information was entered or updated in the record;
 - b. signature or initials of the person entering the information; and
 - c. documentation of the need for ongoing services.

K. The SFC caregiver shall be required to take immediate actions to protect the health, safety and welfare of clients at all times.

1. When a client has been involved in a critical incident or is in immediate jeopardy, the SFC caregiver shall seek immediate assistance from emergency medical services and local law enforcement agencies, as needed.

2. If abuse, neglect or exploitation is suspected or alleged, the SFC caregiver is required to report such abuse, neglect or exploitation in accordance with R.S.40:2009.20 or any successor statute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:91 (January 2012).

Subchapter L. Supervised Independent Living Module

§5093. General Provisions

A. Providers applying for the Supervised Independent Living Module under the HCBS license shall meet the core

licensing requirements as well as the module specific requirements of this Section.

B. When applying for the SIL module under the HCBS provider license, the provider shall indicate whether the provider is initially applying as an SIL or as an SIL via shared living conversion process, or both.

C. Clients receiving SIL services must be at least 18 years of age. An SIL living situation is created when an SIL client utilizes an apartment, house or other single living unit as his place of residence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:93 (January 2012).

§5094. Operational Requirements for the Supervised Independent Living Module

A. A provider shall ensure that the living situation is freely selected by the client. An SIL residence may be owned or leased by either the provider or the client. At the expense of the owner or lessee, a provider shall ensure that the living situation shall be:

1. accessible and functional, considering any physical limitations or other disability of the client;
2. free from any hazard to the health or safety of the client;
3. properly equipped with accommodations for activities of daily living;
4. in compliance with applicable health, safety, sanitation and zoning codes;
5. a living situation that affords the client's individual privacy;
6. arranged such that if there is more than one client in the living situation, the living environment does not conflict with the individual ISP of either client;
7. equipped with a functional kitchen area including space for food storage and a preparation area;
8. equipped with a functional private full bathroom. There shall be at least one full or half bathroom for every two clients residing at the SIL;
9. equipped with a living area;
10. equipped with an efficiency bedroom space or a separate private bedroom with a locking door, if not contraindicated by a condition of the client residing in the room:

- a. There shall be at least one bedroom for each two unrelated clients living in the SIL;

- b. Each client shall have the right to choose whether or not to share a bedroom and a bed with another client;

11. equipped with hot and cold water faucets that are easily identifiable. If an assessment has been made that the client is at risk of scalding, the hot water heater shall be adjusted accordingly;

12. equipped with functional utilities, including:

- a. water;
- b. sewer; and
- c. electricity;

13. equipped with functional air conditioning and heating units which is capable of maintaining an ambient temperature between 65 and 80 degrees Fahrenheit throughout the SIL;

14. kept in a clean, comfortable home-like environment;

15. equipped with the following furnishings if owned or leased by a provider:

- a. a bed unit per client which includes a frame, clean mattress and clean pillow;
- b. a private dresser or similar storage area for personal belongings that is readily accessible to the resident. There shall be one dresser per client;
- c. one closet, permanent or portable, to store clothing or aids to physical functioning, if any, which is readily accessible to the resident. There shall be one closet per bedroom;
- d. a minimum of two chairs per client;
- e. a table for dining;
- f. window treatments to ensure privacy; and
- g. adequate light in each room, hallway and entry to meet the requirements of the activities that occur in those areas; and

16. equipped with a functional smoke detector and fire extinguisher.

B. A provider shall ensure that any client placed in the living situation has:

1. 24-hour access to a working telephone in the SIL;
2. access to transportation; and
3. access to any services in the client's approved ISP.

C. The department shall have the right to inspect the SIL and client's living situation.

D. An SIL provider shall ensure that no more than four unrelated clients are placed in an apartment, house or other single living unit utilized as a supervised independent living situation.

1. A SIL living situation shall make allowances for the needs of each client to ensure reasonable privacy which shall not conflict with the program plan of any resident of the living situation.

2. No clients shall be placed together in a living situation against their choice. The consent of each client shall be documented in the clients' record.

E. Supervision

1. For purposes of this Section, a supervisor is defined as a person, so designated by the provider agency, due to experience and expertise relating to client needs.

2. A supervisor shall have a minimum of two documented contacts per week with the client. The weekly contacts may be made by telephone, adaptive communication technology or other alternative means of communication.

a. The supervisor shall have a minimum of one face-to-face contact per month with the client in the client's home. The frequency of the face-to-face contacts shall be based on the client's needs.

b. In the event that the client has been admitted to a hospital or other inpatient facility, a face-to-face contact in the facility may substitute for a face-to-face contact in the client's home.

c. Providers may make as many contacts in a day as are necessary to meet the needs of the client. However, only one of those contacts will be accepted as having met one of the two documented weekly contacts or the one monthly face-to-face contact.

3. Attempted contacts are unacceptable and will not count towards meeting the requirements.

F. In addition to the core licensing requirements, the SIL provider shall:

1. provide assistance to the client in obtaining and maintaining housing;

2. allow participation in the development, administration and oversight of the client's service plan to assure its effectiveness in meeting the client's needs;

3. assure that bill payment is completed monthly in accordance with the individual service plan, if applicable; and

4. assure that staff receive training in identifying health and safety issues including, but not limited to, scald prevention.

G. An SIL provider shall assess the following in conjunction with the client or client's legal representative when selecting the location of the SIL situation for the client:

- a. risks associated with the location;
- b. client cost;
- c. proximity to the client's family and friends;
- d. access to transportation;
- e. proximity to health care and related services;
- f. client choice;
- g. proximity to the client's place of employment;

and

- h. access to community services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:93 (January 2012).

§5095. Supervised Independent Living Shared Living Conversion Process

A. The SIL Shared Living Conversion process is a situation in which a home and community-based shared living model, for up to six persons, may be chosen as a living option for participants in the Residential Options Waiver or any successor waiver.

B. Only an existing ICF/DD group or community home with up to 8 beds as of promulgation of the final Rule governing these provisions, may voluntarily and permanently close its home and its related licensed, Medicaid certified and enrolled ICF/DD beds to convert to new community-based waiver opportunities (slots) for up to six persons in shared living model or in combination with other ROW residential options. These shared living models will be located in the community.

1. Notwithstanding any other provision to the contrary, an SIL Shared Living Conversion model shall ensure that no more than six ROW waiver clients live in an apartment, house or other single living situation upon conversion.

C. The DHH Office for Citizens with Developmental Disabilities (OCDD) shall approve all individuals who may be admitted to live in and to receive services in an SIL Shared Living Conversion model.

D. The ICF/DD provider who wishes to convert an ICF/DD to an SIL via the shared living conversion model shall be approved by OCDD and shall be licensed by HSS prior to providing services in this setting, and prior to accepting any ROW participant or applicant for residential or any other developmental disability service(s).

E. An ICF/DD provider who elects to convert to an SIL via the shared living conversion model may convert to one or more conversion models, provided that the total number of SIL shared living conversion slots; beds shall not exceed the number of Medicaid facility need review bed approvals of the ICF(s)/DD so converted.

1. The conversion of an ICF(s)/DD to an SIL via the shared living conversion process may be granted only for the number of beds specified in the applicant's SIL shared living conversion model application to OCDD.

2. At no point in the future may the provider of a converted SIL, which converted via the shared living conversion process, be allowed to increase the number of SIL slots approved at the time of conversion.

3. Any remaining Medicaid facility need review bed approvals associated with an ICF/DD that is being converted cannot be sold or transferred and are automatically considered terminated.

F. An ICF/DD provider who elects to convert to an SIL via the shared living conversion process shall obtain the approval of all of the residents of the home(s) (or the responsible parties for these residents) regarding the conversion of the ICF/DD prior to beginning the process of conversion.

G. Application Process

1. The ICF/DD owner or governing board must sign a conversion agreement with OCDD regarding the specific beds to be converted and submit a plan for the conversion of these beds into ROW shared living or other ROW residential waiver opportunities, along with a copy of the corresponding and current ICF/DD license(s) issued by HSS.

a. This conversion plan must be approved and signed by OCDD and the owner or signatory of the governing board prior to the submittal of a HCBS provider, SIL module licensing application to DHH-HSS.

2. A licensed and certified ICF/DD provider who elects to convert an ICF/DD to an SIL via the shared living conversion process shall submit a licensing application for a HCBS provider license, SIL Module. The ICF/DD applicant seeking to convert shall submit the following information with his licensing application:

a. a letter from OCDD stating that the owner or governing board has completed the assessment and planning requirements for conversion and that the owner or governing board may begin the licensing process for an HCBS provider, SIL Module;

b. a letter of intent from the owner or authorized representative of the governing board stating:

i. that the license to operate an ICF/DD will be voluntarily surrendered upon successfully completing an initial licensing survey and becoming licensed as an SIL via the shared living conversion process; and

ii. that the ICF/DD Medicaid facility need review bed approvals will be terminated upon the satisfactory review of the conversion as determined by OCDD, pursuant to its 90 day post conversion site visit; and

3. an executed copy of the conversion agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:94 (January 2012).

Subchapter M. Supported Employment Module

§5099. General Provisions

A. The provider applying to be licensed as a supported employment provider agency shall meet all of the HCBS provider core licensing requirements with the exception of the following requirements. The supported employment provider agency is not required to:

1. return all telephone calls from clients within a reasonable amount of time, other than during working hours;

2. have written policies and procedures approved by the owner or governing body that addresses client funds and emergency preparedness;

3. have written policies and procedures for behavior management, provided that the provider has no client with behavior management issues;

4. have nursing services staff and direct care staff;

5. have a client's assessment of needs conducted by a registered nurse; and

6. maintain progress notes at the client's home.

B. The administrator of the supported employment provider agency shall be exempt from the education qualifications listing in the core licensing requirements of this Chapter.

C. The assessment of needs shall be done prior to placement of the client on a job site. A Medicaid HCBS comprehensive assessment approved by a DHH program office for a Medicaid recipient shall not substitute for the assessment of needs. A comprehensive plan of care approved by the department for Medicaid or waiver reimbursement shall not substitute for the ISP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORY NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:95 (January 2012).

Bruce D. Greenstein
Secretary

1201#068

RULE

Department of Health and Hospitals Office of Public Health

Marine and Fresh Water Animal Food Products
(LAC 51:IX.325, 327, 330, 331 and 333)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., that the state health officer acting through the Department of Health and Hospitals, Office of Public Health, pursuant to the authority in R.S. 40:4(A)(1), R.S. 40:5(2),(3), (5), (15), (17), (19), (20) and (21), and R.S. 56:437, has amended and revised Title 51 (Public Health—Sanitary Code), Part IX (Marine and Fresh Water Animal Food Products), by effecting substantive changes as outlined below. The changes are due to Act 1 of the 2011 Regular Session of the Louisiana Legislature.

Title 51
PUBLIC HEALTH—SANITARY CODE
Part IX. Marine and Fresh Water Animal Food
Products

Chapter 3. Preparation and Handling of Seafood for Market

§325. Penalties Relative to Shellstock Container Tagging

[formerly paragraph 9:051-2]

A. Shellstock containers which are not tagged or labeled in accordance with the tagging or labeling requirements of this Part shall subject the contents thereof to seizure and destruction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.A(1), R.S. 40:5(2), (3), (5), (7), (15), (17), (19), (20), (21), and R.S. 56:437.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1308 (June 2002), amended LR 38:96 (January 2012).

§327. Refrigeration of Shellstock Oysters, Clams and Mussels

[formerly paragraph 9:052]

A. Shellstock shall be placed under mechanical refrigeration at an air temperature (measured 12 inches from the blower) not to exceed 45°F within the time period prescribed herein; and shall be maintained at or below that temperature through out all levels of commerce. Shellstock harvested for raw consumption during the months January through December shall be subject to the time to refrigeration requirements outlined in Subsection A of §329 of this Part.

EXCEPTION: Shellstock harvested in the months of May through October for raw consumption only by persons within the state of Louisiana shall be allowed, in accordance with all of the requirements of §330 of this Part [including, but not limited to, use of a fuchsia (pinkish-purple) color tag or label on the container], to be placed under mechanical refrigeration at an air temperature not to exceed 45°F within 5.0 hours from the time harvesting begins. Any such shellstock meeting this exception shall not be sold for use outside of the state of Louisiana.

B. All shellstock harvested for raw consumption shall be placed under temperature control in accordance with the requirements specified under Subsection A of §329 of this Part. Any shellstock harvested which exceeds the time-temperature matrix requirements of Subsection A of §329 of this Part shall not be provided to or served to anyone for the purpose of raw consumption, but shall only be provided to a certified dealer for the express purposes of shucking or post-harvest processing only.

EXCEPTION: Shellstock harvested in the months of May through October for raw consumption only by persons within the state of Louisiana shall be allowed, in accordance with all of the requirements of §330 of this Part [including, but not limited to, use of a fuchsia (pinkish-purple) color tag or label on the container], to be placed under mechanical refrigeration at an air temperature not to exceed 45°F within 5.0 hours from the time harvesting begins. Any such shellstock meeting this exception shall not be sold for use outside of the state of Louisiana.

C. Once shellstock is off-loaded from the harvest vessel onto the dock it must be placed under mechanical refrigeration within 2.0 hours; but the total harvest to refrigeration time shall not exceed the time-temperature matrix specified under Subsection A of §329 of this Part.

EXCEPTION: Shellstock harvested in the months of May through October for raw consumption only by persons within the state of Louisiana shall be allowed, in accordance with all of the requirements of §330 of this Part [including, but not limited to, use of a fuchsia (pinkish-purple) color tag or label on the container], to be placed under mechanical refrigeration at an air temperature not to exceed 45°F within 5.0 hours from the time harvesting begins. Any such shellstock meeting this exception shall not be sold for use outside of the state of Louisiana.

D. Once shellstock is off-loaded from a harvest vessel to an oyster cargo vessel, oysters must be placed under mechanical refrigeration at a time not to exceed the original harvester's time-temperature matrix specified under Subsection A of §329 of this Part.

EXCEPTION: Shellstock harvested in the months of May through October for raw consumption only by persons within the state of Louisiana shall be allowed, in accordance with all of the requirements of §330 of this Part [including, but not limited to, use of a fuchsia (pinkish-purple) color tag or label on the container], to be placed under mechanical refrigeration at an air temperature not to exceed 45°F within 5.0 hours from the time harvesting begins. Any such shellstock meeting this exception shall not be sold for use outside of the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(1), R.S. 40:5(2), (3), (5), (7), (15), (17), (19), (20), (21), and R.S. 40:5.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1308 (June 2002), amended LR 31:2896 (November 2005), LR 34:2175 (October 2008), LR 36:1016 (May 2010), LR 38:96 (January 2012).

§330. Refrigeration Requirements for Shellstock Harvested during the months of May through October for Raw Consumption only by persons located within the State of Louisiana

A. Any shellstock harvested in the months of May through October for raw consumption only by persons within the state of Louisiana shall be placed under mechanical refrigeration at an air temperature not to exceed 45°F within 5.0 hours from the time harvesting begins and such shellstock shall not be sold for use outside of the state of Louisiana.

B. The Department of Health and Hospitals and the Department of Wildlife and Fisheries have cooperatively developed a single tag which purpose is to immediately and specifically indicate by its fuchsia (pinkish-purple) color that the oysters contained in the sack or box have been harvested following the requirements of this Section. Language shall be printed on the tag which shall explicitly state "oysters contained herein must not be sold for use outside of the state of Louisiana" and the oysters contained in the sack or box (excluding post-harvest process product) shall not be sold for use outside of the state of Louisiana. This tag shall be in addition to any tag(s) required under §323 of this Part.

C. Oysters being processed (shucked or frozen) under this Section must identify on the packing container that this product cannot be sold for use outside of the state of Louisiana.

D. When harvesting for oysters which will be harvested and tagged under the requirements of this Section (i.e., oysters to be sold for raw consumption only by persons located within the state of Louisiana), each harvester shall contact and notify the Department of Wildlife and Fisheries

prior to leaving port. The Department of Wildlife and Fisheries shall be notified by calling 1-800-442-2511.

E. Records relating to oysters which will only be sold for raw consumption within the state of Louisiana shall be completed by both the harvester and dealer(s), and shall be kept separate from records for shellstock product intended for interstate shipment. These records shall be maintained for a period of one year (two years if frozen) and be made readily available for examination by agents of the Department of Health and Hospitals and the Department of Wildlife and Fisheries. Approved log sheets, properly completed and maintained, for the current and previous 15 days harvest shall be kept aboard the harvest vessel for immediate examination. A copy of the log sheet form required to be kept and maintained is shown below in §345 of this Part.

F. All oysters on board any vessel actively being utilized for the purpose of intrastate shipments under the conditions of this Section shall be restricted to the use of intrastate [fuchsia (pinkish purple) color] tags for all oysters contained on that vessel from the time harvesting begins until all oysters are offloaded dockside.

G. In addition to all other required notifications/entries by harvesters prior to the taking of oysters under this Section, the harvester shall legibly document on the required harvester-dealer time temperature log sheet "For Intrastate Shipments Only."

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(1), R.S. 40:5(2), (3), (5), (7), (15), (17), (19), (20), (21), and R.S. 56:437.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:96 (January 2012).

§331. Refrigeration Requirements for Shellstock Harvested for Shucking or Post-Harvest Processing by a Certified Dealer during the Months January through December [formerly paragraph 9:052-2]

A. Time to refrigeration requirements for shellstock harvested for shucking or post-harvest processing by a certified dealer during the months January through December shall be as follows.

1. All shellstock shall be placed under mechanical refrigeration at an air temperature not to exceed 45°F no later than 12 midnight each day, except for the months of December, January, and February.

2. Dealer/harvester tags utilized to identify shellstock harvested for shucking or post-harvest processing by a certified dealer must be identified with a green tag or label placed on the outside of the shellstock container which states: "FOR SHUCKING BY A CERTIFIED DEALER OR POST-HARVEST PROCESSING ONLY".

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(1), R.S. 40:5(2), (3), (5), (7), (15), (17), (19), (20), (21).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1309 (June 2002), amended LR 31:2896 (November 2005), LR 34:2175 (October 2008), LR 35:1239 (July 2009), LR 36:1017 (May 2010), LR 38:97 (January 2012).

§333. General Provisions [formerly paragraph 9:052-3]

A. - G.2. ...

H. A Hazard Analysis Critical Control Point (HACCP) plan for oyster harvesters shall be required for all oyster harvesters dredging for product intended for the half-shell market.

1. The oyster harvester must demonstrate through record keeping that oysters harvested have met the refrigeration time and temperature requirements of §329.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(1) and R.S. 40:5(2), (3), (5), (7), (15), (17), (19), (20), (21).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1310 (June 2002), repromulgated LR 29:173 (February 2003), amended LR 34:2176 (October 2008), amended LR 38:97 (January 2012).

Bruce D. Greenstein
Secretary

12013069

RULE

**Department of Health and Hospitals
Radiologic Technology Board of Examiners**

Fusion Technology (LAC 46:LXVI.901, 1127, and 1129)

Notice is hereby given that the Louisiana State Radiologic Technology Board of Examiners (board) pursuant to the authority of the Louisiana R.S. 37:3207(B)(2) and 3220 and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., has amended its rules governing General Provisions LAC 46:LXVI.Chapter 9 (Licensure) by adding the terms "Fusion Technologist" and "Fusion Technology" to Section 901 (Definitions) and by adopting Sections 1127 and 1129 (Temporary and Limited Purpose Permits) in LAC 46:LXVI.Chapter 11 (Licensure).

The Rule establishes the necessary qualification, requirements, and formalities for the issuance of temporary permits to radiologic technologists seeking to practice fusion technology under R.S. 37:2000 and 37:3208.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LXVI. Radiologic Technologists

Chapter 9. General Provisions

§901. Definitions

A. The following words and terms, when used in this rule shall have the following meanings, unless the text clearly indicates otherwise.

ARRT—the American Registry of Radiologic Technologists.

Board—the Radiologic Technology Board of Examiners created pursuant to R.S. 37:3200-3201.

Department—the Department of Health and Hospitals (DHH).

Fusion Technologist—a person, other than a licensed practitioner, who under the direction and supervision of a licensed practitioner applies radiation while operating fusion technology imaging equipment or uses radioactive materials on humans for diagnostic or therapeutic purposes under prescription of a licensed practitioner.

Fusion Technology—the operation of positron emission tomography (PET) and computed tomography (CT) imaging equipment or any other hybrid imaging equipment identified and recognized by the board.

Ionizing Radiation—commonly known as x-rays or gamma rays, they remove electrons from the atoms of matter lying in their path (e.g., ionization).

JRCERT—the Joint Review Committee on Education in Radiologic Technology.

License—a certificate issued by the board authorizing the licensee to use radioactive materials or equipment emitting or detecting ionizing radiation on humans for diagnostic or therapeutic purposes in accordance with the provisions of this Chapter.

Licensed Practitioner—a person licensed to practice medicine, dentistry, podiatry, chiropractic, or osteopathy in this state, or an advanced practice registered nurse licensed to practice in this state.

Licensed Radiologic Technologist (LRT)—any person licensed pursuant to this Chapter.

Nuclear Medicine Technologist—a person, other than a licensed practitioner, who under the direction and supervision of a licensed practitioner uses radioactive materials on humans for diagnostic or therapeutic purposes upon prescription of a licensed practitioner.

Radiation Therapy Technologist—a person, other than a licensed practitioner, who under the direction and supervision of a licensed practitioner applies radiation to humans for therapeutic purposes upon prescription of a licensed practitioner.

Radiographer—a person, other than a licensed practitioner, who under the direction and supervision of a licensed practitioner applies radiation to humans for diagnostic purposes upon prescription of a licensed practitioner.

Radiologic Technologist—any person who is a radiographer, a radiation therapy technologist, or a nuclear medicine technologist licensed under this Chapter who under the direction and supervision of a licensed practitioner applies radiation to humans upon prescription of a licensed practitioner.

Radiologic Technology—the use of a radioactive substance or equipment emitting or detecting ionizing radiation on humans for diagnostic or therapeutic purposes upon prescription of a licensed practitioner.

Radiological Physicist—a person who is certified by the American Board of Radiology in radiological physics or one of the subspecialties of radiological physics or who is eligible for such certification.

Radiologist—a physician certified by the American Board of Radiology or the American Osteopathic Board of Radiology, the British Royal College of Radiology, or certified as a radiologist by the Canadian College of Physicians and Surgeons.

Student—any person who is enrolled in and attending a board-approved educational program or college of radiologic technology who applies radiation to humans while under the supervision of a licensed practitioner or a licensed radiologic technologist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3207(B)(2).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Radiologic Technology Board of Examiners, LR 11:872 (September 1985), amended by the Department of Health and Hospitals, Radiologic Technology Board of Examiners, LR 23:71 (January 1997), LR 38:97 (January 2012).

Chapter 11. Licensure

§1127. Temporary and Limited Purpose Permits

A. The board may, in its discretion, issue temporary or limited purpose permits as are, in its judgment, necessary or appropriate to the particular circumstances of the individual applicants or radiologic technologists who do not meet or possess all of the qualifications or requirements for licensing. Such a permit creates no right or entitlement to licensing or renewal of the permit after its expiration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3207(B)(2).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Radiologic Technology Board of Examiners, LR 38:98 (January 2012).

§1129. Fusion Technology Temporary Permit

A. The board may issue a temporary permit to an applicant seeking to practice fusion technology for the purpose of obtaining the clinical experience requirements in order to qualify to sit for the required American Registry of Radiologic Technologists (ARRT) Computed Tomography (CT) certification examination, provided that the applicant:

1. possess a current unrestricted license to practice nuclear medicine technology;
2. has submitted a board approved clinical training agreement to the board;
3. has completed four ARRT/Board approved CE credit hours in contrast media/drug administration;
4. will perform Computed Tomography Procedures only when operating multimodality Positron Emission Tomography (PET), Single Photo Emission- Computed Tomography (SPECT), or any other hybrid imaging equipment identified by the board, and only under the direct supervision of a licensed physician, who is a credentialed diagnostic and/or nuclear medicine radiologist;
5. satisfies the applicable fees prescribed in these rules and the Radiologic Technology Practice Act.

B. The temporary permit issued under this section shall expire, and thereby become null and void and to no effect on the earliest of the following dates:

1. 12 months from the date on which it was issued;
2. the date on which the board gives notice to the permit holder of its final action granting or denying issuance of a license to practice fusion technology;

C. A permit issued under this Section which has expired may be renewed or reissued by the board for one or more successive 12 month periods, provided that prior to the expiration of the initial temporary permit:

1. the permit holder has performed successfully and competently in the required clinical training;
2. the applicant's clinical training agreement has been renewed;
3. no grounds are known which would provide cause for the board to refuse to renew or to revoke the temporary permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3207(B)(2).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Radiologic Technology Board of Examiners, LR 38:98 (January 2012).

Susan Hammonds-Guarisco, B.S.R.T.
Chairman

1201#022

RULE

Department of Natural Resources Office of Conservation

Hazardous Liquids Pipeline Safety (LAC 33:V.Chapters 301-309)

The Louisiana Office of Conservation amended LAC 33:V.301 et seq. in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. and pursuant to power delegated under the laws of the State of Louisiana and particularly Title 30 of the Louisiana Revised Statutes of 1950, Section 30:501 et seq. This Rule amends the minimum pipeline safety requirements for hazardous liquids pipelines.

There will be negligible cost to directly affected persons or hazardous liquids pipeline operators. Benefits will be realized by persons living and working near hazardous liquids pipelines through safer construction and operation standards imposed by the rule amendments. Moreover, Louisiana presently receives federal funds and pipeline inspection fees to administer the Hazardous Liquids Pipeline Safety Program. Failure to amend the Louisiana rules to make them consistent with federal regulations would cause the state to lose federal funding.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Wastes and Hazardous Materials

Subpart 3. Natural Resources

Chapter 301. Transportation of Hazardous Liquids by Pipeline

[49 CFR Part 195]

Subchapter A. General [Subpart A]

§30103. Which pipelines are covered by this Subpart?

[49 CFR 195.1]

A. Covered. Except for the pipelines listed in Subsection B of this Section, this Subpart applies to pipeline facilities and the transportation of hazardous liquids or carbon dioxide associated with those facilities within the state of Louisiana, including the coastal zone limits. Covered pipelines include, but are not limited to: [49 CFR 195.1(a)]

1. any pipeline that transports a highly volatile liquid (HVL); [49 CFR 195.1(a)(1)]

2. any pipeline segment that crosses a waterway currently used for commercial navigation; [49 CFR 195.1(a)(2)]

3. except for a gathering line not covered by paragraph A.4 of this Section, any pipeline located in a rural or non-rural area of any diameter regardless of operating pressure; [49 CFR 195.1(a)(3)]

4. any of the following onshore gathering lines used for transportation of petroleum: [49 CFR 195.1(a)(4)]

a. a pipeline located in a non-rural area; [49 CFR 195.1(a)(4)(i)]

b. a regulated rural gathering line as provided in §30117; or [49 CFR 195.1(a)(4)(ii)]

c. a pipeline located in an inlet of the Gulf of Mexico as provided in §30413. [49 CFR 195.1(a)(4)(iii)]

B. Excepted. This Subpart does not apply to any of the following: [49 CFR 195.1(b)]

1. transportation of a hazardous liquid transported in a gaseous state; [49 CFR 195.1(b)(1)]

2. transportation of a hazardous liquid through a pipeline by gravity; [49 CFR 195.1(b)(2)]

3. transportation of a hazardous liquid through any of the following lowstress pipelines: [49 CFR 195.1(b)(3)]

a. a pipeline subject to safety regulations of the U.S. Coast Guard; or [49 CFR 195.1(b)(3)(i)]

b. a pipeline that serves refining, manufacturing, or truck, rail, or vessel terminal facilities, if the pipeline is less than one mile long (measured outside facility grounds) and does not cross an offshore area or a waterway currently used for commercial navigation; [49 CFR 195.1(b)(3)(ii)]

4. transportation of petroleum through an onshore rural gathering line that does not meet the definition of a “regulated rural gathering line” as provided in §30117. This exception does not apply to gathering lines in the inlets of the Gulf of Mexico subject to §30413; [49 CFR 195.1(b)(4)]

B.5. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 18:861 (August 1992), LR 20:439 (1994), LR 21:814 (August 1995), LR 27:1523 (September 2001), LR 29:2804 (December 2003), LR 33:466 (March 2007), LR 35:2791 (December 2009), LR 38:99 (January 2012).

§30105. Definitions [49 CFR 195.2]

A. As used in this Subpart:

Alarm—an audible or visible means of indicating to the controller that equipment or processes are outside operator-defined, safety-related parameters.

Controller—a qualified individual who remotely monitors and controls the safety-related operations of a pipeline facility via a SCADA system from a control room, and who has operational authority and accountability for the remote operational functions of the pipeline facility.

Control Room—an operations center staffed by personnel charged with the responsibility for remotely monitoring and controlling a pipeline facility.

Supervisory Control and Data Acquisition (SCADA) System—a computer-based system or systems used by a controller in a control room that collects and displays information about a pipeline facility and may have the ability to send commands back to the pipeline facility.

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§30107. Matter Incorporated by Reference in Whole or in Part [49 CFR 195.3]

A. - B.7. ...

C. The full titles of publications incorporated by reference wholly or partially in this Subpart are as follows. Numbers in parentheses indicate applicable editions: [49 CFR 195.3(c)].

Source and Name of Referenced Material	Title 33 Reference
A. Pipeline Research Council International, Inc. (PRCI):	
(1) AGA Pipeline Research Committee, Project PR-3-805, "A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe" (December 22, 1989). The RSTRENG program may be used for calculating remaining strength.	§30452.H.4.a.ii; 30452.H.4.c.iv; 30587.
B. American Petroleum Institute (API):	
(1) ANSI/API Specification 5L/ISO 3183 "Specification for Line Pipe" (44th edition, October 2007, including errata (January 2009) and addendum (February 2009)).	§§30161.B.1; 30161.E.
(2) API Recommended Practice 5L1, "Recommended Practice for Railroad Transportation of Line Pipe" (6th edition, July 2002).	§30207.A
(3) API Recommended Practice 5LW, "Transportation of Line Pipe on Barges and Marine Vessels" (2nd edition, December 1996, effective March 1, 1997).	§30207.B
(4) ANSI/API Specification 6D, "Specification for Pipeline Valves" (23rd edition, April 2008, effective October 1, 2008) and errata 3 (includes 1 & 2 (2009)).	§30173.A.4.
(5) API Specification 12F "Specification for Shop Welded Tanks for Storage of Production Liquids" (11th edition, November 1, 1994, reaffirmed 2000, errata, February 2007).	§§30189.B.1; 30205.B.2; 30264.B.1; 30264.E.1; 30307.A; 30565; 30579.D.
(6) API Standard 510, "Pressure Vessel Inspection Code: In-Service Inspection, Rating, Repair, and Alteration" (9th edition, June 2006).	§§30205.B.3; 30432.C.
(7) API Standard 620 "Design and Construction of Large, Welded, Low-Pressure Storage Tanks" (11th edition, February 2008, addendum 1 March 2009).	§§30189.B.2; 30205.B.2; 30264.B.1; 30264.E.3; 30307.B.
(8) API Standard 650 "Welded Steel Tanks for Oil Storage" (11th edition, June 2007, addendum 1, November 2008).	§§30189.B.3; 30205.B.1; 30264.B.1; 30264.E.2; 30307.C; 30307.D; 30565; 30579.D.
(9) ANSI/API Recommended Practice 651 "Cathodic Protection of Aboveground Petroleum Storage Tanks" (3rd edition, January 2007).	§§30565; 30579.D.
(10) ANSI/API Recommended Practice 652 "Linings of Aboveground Petroleum Storage Tank Bottoms" (3rd edition, October 2005).	§30579.D.
(11) API Standard 653 "Tank Inspection, Repair, Alteration, and Reconstruction" (3rd edition, December 2001, includes addendum 1 (September 2003), addendum 2 (November 2005), addendum 3 (February 2008), and errata (April 2008)).	§§30205.B.1; 30432.B.
(12) API 1104 "Welding of Pipelines and Related Facilities" (20th edition, October 2005, errata/addendum (July 2007), and errata 2 (December 2008)).	§§30222.A; 30228.B.; 30214.A
(13) API Recommended Practice 1130, "Computational Pipeline Monitoring for Liquids: Pipeline Segment" (3rd edition, September 2007).	§§30191; 30444.

Source and Name of Referenced Material	Title 33 Reference
(14) API Recommended Practice 1162 "Public Awareness Programs for Pipeline Operators," (1st edition, December 2003)	§§30440.A.; 30440.B; 30440.C.
(15) API Recommended Practice 1165, "Recommended Practice for Pipeline SCADA Displays," (API RP 1165) First Edition (January 2007).	§30446.C.1
(16) API Standard 2000, "Venting Atmospheric and Low-Pressure Storage Tanks Nonrefrigerated and Refrigerated" (5th edition, April 1998, errata, November 15, 1999).	§§30264.E.2; 30264.E.3.
(17) API Recommended Practice 2003 "Protection Against Ignitions Arising out of Static, Lightning, and Stray Currents" (7th edition, January 2008).	§30405.A.
(18) API Publication 2026 "Safe Access/Egress Involving Floating Roofs of Storage Tanks in Petroleum Service" (2nd edition, April 1998, reaffirmed June 2006).	§30405.B.
(19) API Recommended Practice 2350 "Overfill Protection for Storage Tanks In Petroleum Facilities" (2nd edition, April 1998, reaffirmed June 2006).	§30428.C.
(20) PI Standard 2510 "Design and Construction of LPG Installations" (8th edition, 2001)	§§30189.B.3; 30205.B.3; 30264.B.2; 30264.E.4; 30307.E; 30428.C; 30432.C.
(21) API Recommended Practice 1168 "Pipeline Control Room Management," (API RP 1168) First Edition (September 2008).	§30446.C.5; 30446.F.1
C. ASME International (ASME):	
(1) ASME/ANSI B16.9-2007, "Factory-Made Wrought Butt Welding Fittings" (December 7, 2007).	§30175.A.
(2) ASME/ANSI B31.4-2006, "Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids" (October 20, 2006).	§30452.H.4.a.
(3) ASME /ANSI B31G-1991 (Reaffirmed; 2004) "Manual for Determining the Remaining Strength of Corroded Pipelines"	§§30452.H.4.a.ii; 30452.H.4.c.iv.
(4) ASME/ANSI B31.8-2007, "Gas Transmission and Distribution Piping Systems" (November 30, 2007).	§§30111.A.1.a; 30406.A.1.a.
(5) 2007 ASME Boiler and Pressure Vessel Code, Section VIII, Division 1 "Rules for Construction of Pressure Vessels," (2007 edition, July 1, 2007).	§§30181; 30307.E.
(6) 2007 ASME Boiler and Pressure Vessel Code, Section VIII, Division 2 "Alternate Rules for Construction for Pressure Vessels" (2007 edition, July 1, 2007).	§30307.E.
(7) 2007 ASME Boiler & Pressure Vessel Code, Section IX: "Qualification Standard for Welding and Brazing Procedures, Welders, Brazers, and Welding and Brazing Operators," (2007 edition, July 1, 2007).	§30222.A.
D. Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS):	
(1) MSS SP-75-2004 "Specification for High Test Wrought Butt Welding Fittings"	§30175.A.
(2) [Reserved]	
E. American Society for Testing and Materials (ASTM):	
(1) ASTM Designation: A53/A53M-07 "Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated Welded and Seamless" (September 1, 2007).	§30161.E.
(2) ASTM Designation: A106/A106M-08 "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service" (July 15, 2008).	§30161.E.

Source and Name of Referenced Material	Title 33 Reference
(3) ASTM Designation: A 333/A 333M-05 "Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service"	§30161.E.
(4) ASTM Designation: A 381-96 (Reapproved 2005) "Standard Specification for Metal-Arc-Welded Steel Pipe for Use With High-Pressure Transmission Systems" (October 1, 2005).	§30161.E.
(5) ASTM Designation: A 671-06 "Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures" (May 1, 2006).	§30161.E.
(6) ASTM Designation: A 672-08 "Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures" (May 1, 2008).	§30161.E.
(7) ASTM Designation: A 691 -98 (Reapproved 2007) "Standard Specification for Carbon and Alloy Steel Pipe Electric-Fusion-Welded for High-Pressure Service at High Temperatures"	§30161.E.
F. National Fire Protection Association (NFPA):	
(1) NFPA 30 "Flammable and Combustible Liquids Code" (2008 edition, approved August 15, 2007).	§30264.B.1.
(2) [Reserved]	
G. NACE International (NACE):	
(1) NACE SP 0169-2007, Standard Practice, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems" (reaffirmed March 15, 2007).	§30571; 30571.A.2
(2) NACE RP SP0502-2008, Standard Practice, "Pipeline External Corrosion Direct Assessment Methodology" (reaffirmed March 20, 2008).	§30588.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 20:439 (1994), LR 21:815 (August 1995), LR 24:1313 (1998), LR 27:1523 (September 2001), LR 29:2806 (December 2003), LR 31:676 (March 2005), LR 33:467 (March 2007), LR 35:2792 (December 2009), LR 38:100 (January 2012).

§30118. What requirements apply to low-stress pipelines in rural areas? [49 CFR 195.12]

A. General. This Section sets forth the requirements for each category of lowstress pipeline in a rural area set forth in Subsection B of this Section. This Section does not apply to a rural lowstress pipeline regulated under this Subpart as a low-stress pipeline that crosses a waterway currently used for commercial navigation; these pipelines are regulated pursuant to §30103.A.2. [49 CFR 195.12(a)]

B. Categories. An operator of a rural low-stress pipeline must meet the applicable requirements and compliance deadlines for the category of pipeline set forth in Subsection C of this Section. For purposes of this Section, a rural low-stress pipeline is a Category 1, 2, or 3 pipeline based on the following criteria. [49 CFR 195.12(b)]

1. A Category 1 rural low-stress pipeline: [49 CFR 195.12(b)(1)]

a. has a nominal diameter of 85/8 inches (219.1 mm) or more; [49 CFR 195.12(b)(1)(i)]

b. is located in or within one-half mile (.80 km) of an unusually sensitive area (USA) as defined in §30112; and [49 CFR 195.12(b)(1)(ii)]

c. operates at a maximum pressure established under §30406 corresponding to: [49 CFR 195.12(b)(1)(iii)]

i. a stress level equal to or less than 20-percent of the specified minimum yield strength of the line pipe; or [49 CFR 195.12(b)(1)(iii)(A)]

ii. if the stress level is unknown or the pipeline is not constructed with steel pipe, a pressure equal to or less than 125 psi (861 kPa) gage. [49 CFR 195.12(b)(1)(iii)(B)]

2. A Category 2 rural pipeline: [49 CFR 195.12(b)(2)]

a. has a nominal diameter of less than 85/8 inches (219.1mm); [49 CFR 195.12(b)(2)(i)]

b. is located in or within one-half mile (.80 km) of an unusually sensitive area (USA) as defined in §30112; and [49 CFR 195.12(b)(2)(ii)]

c. operates at a maximum pressure established under §30406 corresponding to: [49 CFR 195.12(b)(2)(iii)]

i. a stress level equal to or less than 20-percent of the specified minimum yield strength of the line pipe; or [49 CFR 195.12(b)(2)(iii)(A)]

ii. if the stress level is unknown or the pipeline is not constructed with steel pipe, a pressure equal to or less than 125 psi (861 kPa) gage. [49 CFR 195.12(b)(2)(iii)(B)]

3. A Category 3 rural low-stress pipeline: [49 CFR 195.12(b)(3)]

a. has a nominal diameter of any size and is not located in or within one-half mile (.80 km) of an unusually sensitive area (USA) as defined in §30112; and [49 CFR 195.12(b)(3)(i)]

b. operates at a maximum pressure established under §30406 corresponding to a stress level equal to or less than 20-percent of the specified minimum yield strength of the line pipe; or [49 CFR 195.12(b)(3)(ii)]

c. if the stress level is unknown or the pipeline is not constructed with steel pipe, a pressure equal to or less than 125 psi (861 kPa) gage. [49 CFR 195.12(b)(3)(iii)]

C. Applicable Requirements and Deadlines for Compliance. An operator must comply with the following compliance dates depending on the category of pipeline determined by the criteria in Subsection B. [49 CFR 195.12(c)]

1. An operator of a Category 1 pipeline must: [49 CFR 195.12(c)(1)]

a. identify all segments of pipeline meeting the criteria in Paragraph B.1 of this Section before April 3, 2009; [49 CFR 195.12(c)(1)(i)]

b. beginning no later than January 3, 2009, comply with the reporting requirements of Subchapter B of Chapter 301. for the identified segments; [49 CFR 195.12(c)(1)(ii)]

c. IM requirements; [49 CFR 195.12(c)(1)(iii)]

i. establish a written program that complies with §30452 before July 3, 2009, to assure the integrity of the pipeline segments. Continue to carry out such program in compliance with §30452; [49 CFR 195.12(c)(1)(iii)(A)]

ii. an operator may conduct a determination per §30452.A in lieu of the one-half mile buffer; [49 CFR 195.12(c)(1)(iii)(B)]

iii. complete the baseline assessment of all segments in accordance with §30452.C before July 3, 2015, and complete at least 50-percent of the assessments, beginning with the highest risk pipe, before January 3, 2012; [49 CFR 195.12(c)(1)(iii)(C)]

d. comply with all other safety requirements of this Subpart, except Subchapter B of Chapter 305., before July 3, 2009. Comply with the requirements of Subchapter B of Chapter 305 before July 3, 2011. [49 CFR 195.12(c)(1)(d)]

2. An operator of a Category 2 pipeline must: [49 CFR 195.12(c)(2)]

a. identify all segments of pipeline meeting the criteria in Paragraph B.2 of this Section before July 1, 2012. [49 CFR 195.12(c)(2)(i)]

b. beginning no later than January 3, 2009, comply with the reporting requirements of Subchapter B of Chapter 301. for the identified segments; [49 CFR 195.12(c)(2)(ii)]

c. IM; [49 CFR 195.12(c)(2)(iii)]

i. establish a written IM program that complies with §30452 before October 1, 2012 to assure the integrity of the pipeline segments. Continue to carry out such program in compliance with §30452; [49 CFR 195.12(c)(2)(iii)(A)]

ii. an operator may conduct a determination per §30452.A in lieu of the one-half mile buffer; [49 CFR 195.12(c)(2)(iii)(B)]

iii. complete the baseline assessment of all segments in accordance with §30452.C before October 1, 2016 and complete at least 50-percent of the assessments, beginning with the highest risk pipe, before April 1, 2014; [49 CFR 195.12(c)(2)(iii)(C)]

d. comply with all other safety requirements of this Subpart, except Subchapter B of Chapter 305., before October 1, 2012. Comply with Subchapter B of Chapter 305. before October 1, 2014. [49 CFR 195.12(c)(2)(iv)]

3. An operator of a Category 3 pipeline must: [49 CFR 195.12(c)(3)]

a. identify all segments of pipeline meeting the criteria in Paragraph B.3 of this Section before July 1, 2012; [49 CFR 195.12(c)(3)(i)]

b. beginning no later than January 3, 2009, comply with the reporting requirements of Subchapter B of Chapter 301. for the identified segments; [49 CFR 195.12(c)(3)(ii)]

c. comply with all safety requirements of this Subpart, except the requirements in §30452, Subchapter B of Chapter 301, and the requirements in Subchapter B of Chapter 305, before October 1, 2012. Comply with Subchapter B of Chapter 305 before October 1, 2014. [49 CFR 195.12(c)(3)(iii)]

D. Economic Compliance Burden [49 CFR 195.12(d)]

1. An operator may notify PHMSA in accordance with §30452.M of a situation meeting the following criteria: [49 CFR 195.12(d)(1)]

a. the pipeline is a Category 1 rural low-stress pipeline; [49 CFR 195.12(d)(1)(i)]

b. the pipeline carries crude oil from a production facility; [49 CFR 195.12(d)(1)(ii)]

c. the pipeline, when in operation, operates at a flow rate less than or equal to 14,000 barrels per day; and [49 CFR 195.12(d)(1)(iii)]

d. the operator determines it would abandon or shut-down the pipeline as a result of the economic burden to comply with the assessment requirements in §§30452.D or 30452.J. [49 CFR 195.12(d)(1)(iv)]

2. A notification submitted under this provision must include, at minimum, the following information about the

pipeline: Its operating, maintenance and leak history; the estimated cost to comply with the integrity assessment requirements (with a brief description of the basis for the estimate); the estimated amount of production from affected wells per year, whether wells will be shut in or alternate transportation used, and if alternate transportation will be used, the estimated cost to do so. [49 CFR 195.12(d)(2)]

3. When an operator notifies PHMSA in accordance with Paragraph D.1 of this Section, PHMSA will stay compliance with §§30452.D and 30452.J.3 until it has completed an analysis of the notification. PHMSA will consult the Department of Energy (DOE), as appropriate, to help analyze the potential energy impact of loss of the pipeline. Based on the analysis, PHMSA may grant the operator a special permit to allow continued operation of the pipeline subject to alternative safety requirements. [49 CFR 195.12(d)(3)]

E. Changes in unusually sensitive areas. [49 CFR 195.12(e)]

1. If, after June 3, 2008, for Category 1 rural low-stress pipelines or October 1, 2011 for Category 2 rural low-stress pipelines, an operator identifies a new USA that causes a segment of pipeline to meet the criteria in Subsection B of this Section as a Category 1 or Category 2 rural low-stress pipeline, the operator must: [49 CFR 195.12(e)(1)]

a. comply with the IM program requirement in Clause C.1.c.i or C.2.c.i of this Section, as appropriate, within 12 months following the date the area is identified regardless of the prior categorization of the pipeline; and [49 CFR 195.12(e)(1)(i)]

b. complete the baseline assessment required by clause C.1.c.iii or C.2.c.iii of this Section, as appropriate, according to the schedule in §39452.D.3. [49 CFR 195.12(e)(1)(ii)]

2. If a change to the boundaries of a USA causes a Category 1 or Category 2 pipeline segment to no longer be within one-half mile of a USA, an operator must continue to comply with Subparagraph C.1.c or Subparagraph C.2.c of this Section, as applicable, with respect to that segment unless the operator determines that a release from the pipeline could not affect the USA. [49 CFR 195.12(e)(2)]

F. Record Retention. An operator must maintain records demonstrating compliance with each requirement applicable to the category of pipeline according to the following schedule. [49 CFR 195.12(f)]

1. An operator must maintain the segment identification records required in Subparagraph C.1.a, C.2.a or C.3.a of this Section for the life of the pipe. [49 CFR 195.12(f)(1)]

2. Except for the segment identification records, an operator must maintain the records necessary to demonstrate compliance with each applicable requirement set forth in Subsection C of this Section according to the record retention requirements of the referenced Section, Subpart or Subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 35:2794 (December 2009), amended LR 38:101 (January 2012).

Subchapter B. Reporting Accidents and Safety-Related Conditions [Subpart B]

§30123. Scope [49 CFR 195.48]

A. This Subchapter prescribes requirements for periodic reporting and for reporting of accidents and safety-related conditions. This Subchapter applies to all pipelines subject to this Subpart. An operator of a Category 3 rural low-stress pipeline meeting the criteria in §30118 is not required to complete those parts of the hazardous liquid annual report form PHMSA F 7000-1.1 associated with IM or high consequence areas. [49CFR 195.48]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 35:2795 (December 2009), amended LR 38:103 (January 2012).

§30124. Annual Report [49 CFR 195.49]

A. Each operator must annually complete and submit DOT Form PHMSA F 7000-1.1 for each type of hazardous liquid pipeline facility operated at the end of the previous year. An operator must submit the annual report by June 15 each year, except that for the 2010 reporting year the report must be submitted by August 15, 2011. A separate report is required for crude oil, HVL (including anhydrous ammonia), petroleum products, carbon dioxide pipelines, and fuel grade ethanol pipelines. For each state a pipeline traverses, an operator must separately complete those sections on the form requiring information to be reported for each state. [49 CFR 195.49]

B. For intrastate facilities subject to the jurisdiction of the Office of Conservation, a copy of the annual report must be sent to the Commissioner of Conservation, Office of Conservation, Pipeline Safety Section, P.O. Box 94275 Baton Rouge, LA 70804-9275.

1. Annual report information must only include data for intrastate facilities subject to the jurisdiction of the Office of Conservation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 38:103 (January 2012).

§30127. Telephonic Notice of Certain Accidents [49 CFR 195.52]

A. Notice Requirements. At the earliest practicable moment within two hours following discovery of a release of the hazardous liquid or carbon dioxide transported resulting in an event described in §30125, the operator of the system shall give notice, in accordance with §30127.B of any failure that: [49 CFR 195.52(a)]

1. - 5. ...

B. Information Required. Each notice required by subsection A of this section must be made to the National Response Center either by telephone to 800-424-8802 (in Washington, DC, 202-267-2675) or electronically at <http://www.nrc.uscg.mil> and by telephone to the State of Louisiana to (225) 342-5585 (day) or (225) 342-5505 (after working hours) and must include the following information: [49 CFR 195.52(b)]

1. name, address and identification number of the operator; [49 CFR 195.52(b)(1)]

2. name and telephone number of the reporter; [49 CFR 195.52(b)(2)]

3. the location of the failure; [49 CFR 195.52(b)(3)]
4. the time of the failure; [49 CFR 195.52(b)(4)]
5. the fatalities and personal injuries if any; [49 CFR 195.52(b)(5)]

6. initial estimate of amount of product released in accordance with Subsection C of this Section; [49 CFR 195.52(b)(6)]

7. all other significant facts known by the operator that are relevant to the cause of the failure or extent of the damages. [49 CFR 195.52(b)(7)]

C. Calculation. A pipeline operator must have a written procedure to calculate and provide a reasonable initial estimate of the amount of released product. [49 CFR 195.52(c)]

D. New Information. An operator must provide an additional telephonic report to the NRC and for intrastate facilities subject to the jurisdiction of the Office of Conservation, to the Office of Conservation if significant new information becomes available during the emergency response phase of a reported event at the earliest practicable moment after such additional information becomes known. [49 CFR 195.52(d)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 18:863 (August 1992), LR 20:440 (April 1994), LR 21:816 (August 1995), LR 29:2811 (December 2003), LR 35:2795 (December 2009), LR 38:103 (January 2012).

§30131. Accident Reports [49 CFR 195.54]

A. Each operator that experiences an accident that is required to be reported under §30125 must, as soon as practicable, but not later than 30 days after discovery of the accident, file an accident report on DOT Form 7000-1. For intrastate facilities subject to the jurisdiction of the Office of Conservation, a copy of the accident report must be sent concurrently to the Commissioner of Conservation, Office of Conservation, Pipeline Safety Section, P.O. Box 94275 Baton Rouge, LA 70804-9275. [49 CFR 195.54(a)]

B. Whenever an operator receives any changes in the information reported or additions to the original report on DOT Form 7000-1, it shall file a supplemental report within 30 days. For intrastate facilities subject to the jurisdiction of the Office of Conservation, a copy of the supplemental report must be sent concurrently to the Commissioner of Conservation, Office of Conservation, Pipeline Safety Section, P.O. Box 94275 Baton Rouge, LA 70804-9275. [49 CFR 195.54(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), LR 20:440 (April 1994), LR 29:2811 (December 2003), amended LR 38:103 (January 2012).

§30137. Annual Report

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 29:2812 (December 2003), LR 35:2795 (December 2009), repealed LR 38:103 (January 2012).

§30140. Report Submission Requirements
[49 CFR 195.58]

A. General. Except as provided in Subsection B of this Section, an operator must submit each report required by this part electronically to PHMSA at <http://opsweb.phmsa.dot.gov> unless an alternative reporting method is authorized in accordance with Subsection D of this Section. [49 CFR 195.58(a)]

1. Each report required by §30140.A, for intrastate facilities subject to the jurisdiction of the Office of Conservation, must also be submitted to Office of Conservation, P.O. Box 94275, Baton Rouge, LA 70804-9275.

a. Annual report information must only include data for intrastate facilities subject to the jurisdiction of the Office of Conservation.

B. Exceptions. An operator is not required to submit a safety-related condition report (§30135) or an offshore pipeline condition report (§30139) electronically. [49 CFR 195.58 (b)]

C. Safety-Related Conditions. An operator must submit concurrently to the applicable State agency a safety-related condition report required by §30133 for an intrastate pipeline or when the state agency acts as an agent of the secretary with respect to interstate pipelines. [49 CFR 195.58(c)]

D. Alternate Reporting Method. If electronic reporting imposes an undue burden and hardship, the operator may submit a written request for an alternative reporting method to the Information Resources Manager, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, PHP-20, 1200 New Jersey Avenue, SE., Washington DC 20590. The request must describe the undue burden and hardship. PHMSA will review the request and may authorize, in writing, an alternative reporting method. An authorization will state the period for which it is valid, which may be indefinite. An operator must contact PHMSA at 202-366-8075, or electronically to informationresourcesmanager@dot.gov to make arrangements for submitting a report that is due after a request for alternative reporting is submitted but before an authorization or denial is received. [49 CFR 195.58(d)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 29:2812 (December 2003), amended LR 33:469 (March 2007), LR 35:2795 (December 2009), LR 38:104 (January 2012).

§30144. Supplies of Accident Report DOT Form 7000-1
[49 CFR 195.62]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 29:2813 (December 2003), amended LR 35:2796 (December 2009), repealed LR 38:104 (January 2012).

§30145. OMB Control Number Assigned to Information Collection
[49 CFR 195.63]

A. The control number assigned by the Office of Management and Budget to the hazardous liquid pipeline information collection pursuant to the Paperwork Reduction

Act are 2137-0047, 2137-0601, 2137-0604, 2137-0605, 2137-0618, and 2137-0622. [49 CFR 195.63]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 29:2813 (December 2003), amended LR 38:104 (January 2012).

§30146. National Registry of Pipeline and LNG Operators
[49 CFR 195.64]

A. OPID Request. Effective January 1, 2012, each operator of a hazardous liquid pipeline or pipeline facility must obtain from PHMSA an operator identification number (OPID). An OPID is assigned to an operator for the pipeline or pipeline system for which the operator has primary responsibility. To obtain an OPID or a change to an OPID, an operator must complete an OPID Assignment Request DOT Form PHMSA F 1000.1 through the National Registry of Pipeline and LNG Operators in accordance with §30140. [49 CFR 195.64(a)]

B. OPID Validation. An operator who has already been assigned one or more OPID by January 1, 2011 must validate the information associated with each such OPID through the National Registry of Pipeline and LNG Operators at <http://opsweb.phmsa.dot.gov>, and correct that information as necessary, no later than June 30, 2012. [49 CFR 195.64(b)]

C. Changes. Each operator must notify PHMSA electronically through the National Registry of Pipeline and LNG Operators at <http://opsweb.phmsa.dot.gov>, of certain events. [49 CFR 195.64(c)]

1. An operator must notify PHMSA of any of the following events not later than 60 days before the event occurs: [49 CFR 195.64(c)(1)]

a. construction or any planned rehabilitation, replacement, modification, upgrade, uprate, or update of a facility, other than a section of line pipe, that costs \$10 million or more. If 60 day notice is not feasible because of an emergency, an operator must notify PHMSA as soon as practicable; [49 CFR 195.64(c)(1)(i)]

b. construction of 10 or more miles of a new hazardous liquid pipeline; or [49 CFR 195.64(c)(1)(ii)]

c. construction of a new pipeline facility. [49 CFR 195.64(c)(1)(iii)]

2. An operator must notify PHMSA of any following event not later than 60 days after the event occurs: [49 CFR 195.64(c)(2)]

a. a change in the primary entity responsible (i.e., with an assigned OPID) for managing or administering a safety program required by this Subpart covering pipeline facilities operated under multiple OPIDs. [49 CFR 195.64(c)(2)(i)]

b. a change in the name of the operator; [49 CFR 195.64(c)(2)(ii)]

c. a change in the entity (e.g., company, municipality) responsible for operating an existing pipeline, pipeline segment, or pipeline facility; [49 CFR 195.64(c)(2)(iii)]

d. the acquisition or divestiture of 50 or more miles of pipeline or pipeline system subject to this subpart; or [49 CFR 195.64(c)(2)(iv)]

e. the acquisition or divestiture of an existing pipeline facility subject to this Subpart. [49 CFR 195.64(c)(2)(v)]

D. Reporting. An operator must use the OPID issued by PHMSA for all reporting requirements covered under this Subpart and for submissions to the National Pipeline Mapping System. [49 CFR 195.64(d)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 38:104 (January 2012).

Subchapter C. Design Requirements [Subpart C]

§30173. Valves [49 CFR 195.116]

A. - A.3. ...

4. Each valve must be both hydrostatically shell tested and hydrostatically seat tested without leakage to at least the requirements set forth in Section 11 of API Standard 6D (incorporated by reference, see §30107). [49 CFR 195.116(d)]

5. - 6.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 18:864 (August 1992), LR 29:2816 (December 2003), LR 33:469 (March 2007), LR 35:2796 (December 2009), LR 38:105 (January 2012).

Chapter 302. Transportation of Hazardous Liquids by Pipeline—Construction [49 CFR Part 195 Subpart D]

§30207. Transportation of Pipe [49 CFR 195.207]

A. Railroad. In a pipeline operated at a hoop stress of 20 percent or more of SMYS, an operator may not use pipe having an outer diameter to wall thickness ratio of 70 to 1, or more, that is transported by railroad unless the transportation is performed in accordance with API Recommended Practice 5L1 (incorporated by reference, see §30107). [49 CFR 195.207(a)]

B. Ship or Barge. In a pipeline operated at a hoop stress of 20 percent or more of SMYS, an operator may not use pipe having an outer diameter to wall thickness ratio of 70 to 1, or more, that is transported by ship or barge on both inland and marine waterways, unless the transportation is performed in accordance with API Recommended Practice 5LW (incorporated by reference, see §30107). [49 CFR 195.207(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 38:105 (January 2012).

§30264. Impoundment, Protection against Entry, Normal/Emergency Venting or Pressure/Vacuum Relief for Aboveground Breakout Tanks [49 CFR 195.264]

A. - E. ...

1. Normal/emergency relief venting installed on atmospheric pressure tanks built to API Specifications 12F (incorporated by reference, see §30107) must be in accordance with Section 4, and Appendices B and C, of API Specification 12F (incorporated by reference, see §30107). [49 CFR 195.264(e)(1)]

2. Normal/emergency relief venting installed on atmospheric pressure tanks (such as those built to API Standard 650 or its predecessor Standard 12C) must be in

accordance with API Standard 2000 (incorporated by reference, see §30107). [49 CFR 195.264(e)(2)]

3. Pressure-relieving and emergency vacuum relieving devices installed on low pressure tanks built to API Standard 620 (incorporated by reference, see §30107) must be in accordance with Section 9 of API Standard 620 (incorporated by reference, see §30107) and its references to the normal and emergency venting requirements in API Standard 2000 (incorporated by reference, see §30107). [49 CFR 195.264(e)(3)]

4. Pressure and vacuum-relieving devices installed on high pressure tanks built to API Standard 2510 (incorporated by reference, see §30107) must be in accordance with Sections 7 or 11 of API Standard 2510 (incorporated by reference, see §30107). [49 CFR 195.264(e)(4)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 29:2821 (December 2003), amended LR 33:470 (March 2007), LR 35:2797 (December 2009), LR 38:105 (January 2012).

Chapter 303. Transportation of Hazardous Liquids by Pipeline—Pressure Testing [49 CFR Part 195 Subpart E]

§30307. Pressure Testing Aboveground Breakout Tanks [49 CFR 195.307]

A. For aboveground breakout tanks built to API Specification 12F and first placed in service after October 2, 2000, pneumatic testing must be in accordance with Section 5.3 of API Specification 12 F (incorporated by reference, see §30107). [49 CFR 195.307(a)]

B. For aboveground breakout tanks built to API Standard 620 and first placed in service after October 2, 2000, hydrostatic and pneumatic testing must be in accordance with Section 7.18 of API Standard 620 (incorporated by reference, see §30107) [49 CFR 195.307(b)].

C. For aboveground breakout tanks built to API Standard 650 (incorporated by reference, see §30107) and first placed in service after October 2, 2000, testing must be in accordance with Section 5.2 of API Standard 650 (incorporated by reference, see §30107). [49 CFR 195.307(c)]

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 29:2823 (December 2003), amended LR 33:470 (March 2007), LR 38:105 (January 2012).

Chapter 304. Transportation of Hazardous Liquids by Pipeline—Operation and Maintenance [49 CFR Part 195 Subpart F]

§30401. General Requirements [49 CFR 195.401]

A. No operator may operate or maintain its pipeline systems at a level of safety lower than that required by this Chapter and the procedures it is required to establish under §30402.A. [49 CFR 195.401(a)]

B. An operator must make repairs on its pipeline system according to the following requirements. [49 CFR 195.401(b)]

1. Non Integrity Management Repairs. Whenever an operator discovers any condition that could adversely affect the safe operation of its pipeline system, it must correct the

condition within a reasonable time. However, if the condition is of such a nature that it presents an immediate hazard to persons or property, the operator may not operate the affected part of the system until it has corrected the unsafe condition. [49 CFR 195.401(b)(1)]

2. Integrity Management Repairs. When an operator discovers a condition on a pipeline covered under §30452, the operator must correct the condition as prescribed in §30452.H. [49 CFR 195.401(b)(2)]

C. - C.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 29:2824 (December 2003), amended LR 38:105 (January 2012).

§30402. Procedural Manual for Operations, Maintenance, and Emergencies [49 CFR 195.402]

A. - C.14. ...

15. Implementing the applicable control room management procedures required by §30446. [49 CFR 195.402(c)(15)]

D. - E.9. ...

10. Actions required to be taken by a controller during an emergency, in accordance with §30446. [49 CFR 195.402(e)(10)]

F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 29:2824 (December 2003), amended LR 38:106 (January 2012).

§30432. Inspection of In-Service Breakout Tanks [49 CFR 195.432]

A. ...

B. Each operator must inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to API Standard 653 (incorporated by reference, see §30107). However, if structural conditions prevent access to the tank bottom, the bottom integrity may be assessed according to a plan included in the operations and maintenance manual under 30402.C.3. [49 CFR 195.432(b)]

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 29:2829 (December 2003), amended LR 38:106 (January 2012).

§30440. Public Awareness [49 CFR 195.440]

A. ...

B. The operator's program must follow the general program recommendations of API RP 1162 and assess the unique attributes and characteristics of the operator's pipeline and facilities, except as stated in Paragraph B.1. [49 CFR 195.440(b)]

1. Regulatory inspections are not an acceptable alternative to conducting an annual audit for measuring program implementation as mentioned in API RP 1162 Section 8.3.

C. Changes. Each operator must notify PHMSA electronically through the National Registry of Pipeline and LNG Operators at <http://opsweb.phmsa.dot.gov>, of certain events. For intrastate facilities subject to the jurisdiction of

the Office of Conservation, a copy must also be submitted to Office of Conservation, P.O. Box 94275, Baton Rouge, LA 70804-9275. [49 CFR 195.64(c)]

D. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 29:2829 (December 2003), amended LR 33:470 (March 2007), LR 35:2797 (December 2009), LR 38:106 (January 2012).

§30446. Control Room Management [49 CFR 195.446]

A. General. This Section applies to each operator of a pipeline facility with a controller working in a control room who monitors and controls all or part of a pipeline facility through a SCADA system. Each operator must have and follow written control room management procedures that implement the requirements of this Section. The procedures required by this Section must be integrated, as appropriate, with the operator's written procedures required by §30402. An operator must develop the procedures no later than August 1, 2011, and must implement the procedures according to the following schedule. The procedures required by Subsections and Paragraphs B, C.5, D.2, D.3, F and G of this Section must be implemented no later than October 1, 2011. The procedures required by Paragraphs C.1 through C.4, D.1, D.4, and E must be implemented no later than August 1, 2012. The training procedures required by Subsection H must be implemented no later than August 1, 2012, except that any training required by another Paragraph of this Section must be implemented no later than the deadline for that Paragraph. [49 CFR 195.446(a)]

B. Roles and Responsibilities. Each operator must define the roles and responsibilities of a controller during normal, abnormal, and emergency operating conditions. To provide for a controller's prompt and appropriate response to operating conditions, an operator must define each of the following: [49 CFR 195.446(b)]

1. a controller's authority and responsibility to make decisions and take actions during normal operations; [49 CFR 195.446(b)(1)]

2. a controller's role when an abnormal operating condition is detected, even if the controller is not the first to detect the condition, including the controller's responsibility to take specific actions and to communicate with others; [49 CFR 195.446(b)(2)]

3. a controller's role during an emergency, even if the controller is not the first to detect the emergency, including the controller's responsibility to take specific actions and to communicate with others; and [49 CFR 195.446(b)(3)]

4. a method of recording controller shift-changes and any hand-over of responsibility between controllers. [49 CFR 195.446(b)(4)]

C. Provide Adequate Information. Each operator must provide its controllers with the information, tools, processes and procedures necessary for the controllers to carry out the roles and responsibilities the operator has defined by performing each of the following: [49 CFR 195.446(c)]

1. implement API RP 1165 (incorporated by reference, see §30107) whenever a SCADA system is added, expanded or replaced, unless the operator demonstrates that certain provisions of API RP 1165 are not practical for the SCADA system used; [49 CFR 195.446(c)(1)]

2. conduct a point-to-point verification between SCADA displays and related field equipment when field equipment is added or moved and when other changes that affect pipeline safety are made to field equipment or SCADA displays; [49 CFR 195.446(c)(2)]

3. test and verify an internal communication plan to provide adequate means for manual operation of the pipeline safely, at least once each calendar year, but at intervals not to exceed 15 months; [49 CFR 195.446(c)(3)]

4. test any backup SCADA systems at least once each calendar year, but at intervals not to exceed 15 months; and [49 CFR 195.446(c)(4)]

5. implement Section 5 of API RP 1168 (incorporated by reference, see §30107) to establish procedures for when a different controller assumes responsibility, including the content of information to be exchanged. [49 CFR 195.446(c)(5)]

D. Fatigue Mitigation. Each operator must implement the following methods to reduce the risk associated with controller fatigue that could inhibit a controller's ability to carry out the roles and responsibilities the operator has defined: [49 CFR 195.446(d)]

1. establish shift lengths and schedule rotations that provide controllers off-duty time sufficient to achieve eight hours of continuous sleep; [49 CFR 195.446(d)(1)]

2. educate controllers and supervisors in fatigue mitigation strategies and how off-duty activities contribute to fatigue; [49 CFR 195.446(d)(2)]

3. train controllers and supervisors to recognize the effects of fatigue; and [49 CFR 195.446(d)(3)]

4. establish a maximum limit on controller hours-of-service, which may provide for an emergency deviation from the maximum limit if necessary for the safe operation of a pipeline facility. [49 CFR 195.446(d)(4)]

E. Alarm Management. Each operator using a SCADA system must have a written alarm management plan to provide for effective controller response to alarms. An operator's plan must include provisions to: [49 CFR 195.446(e)]

1. review SCADA safety-related alarm operations using a process that ensures alarms are accurate and support safe pipeline operations; [49 CFR 195.446(e)(1)]

2. identify at least once each calendar month points affecting safety that have been taken off scan in the SCADA host, have had alarms inhibited, generated false alarms, or that have had forced or manual values for periods of time exceeding that required for associated maintenance or operating activities; [49 CFR 195.446(e)(2)]

3. verify the correct safety-related alarm set-point values and alarm descriptions when associated field instruments are calibrated or changed and at least once each calendar year, but at intervals not to exceed 15 months; [49 CFR 195.446(e)(3)]

4. review the alarm management plan required by this subsection at least once each calendar year, but at intervals not exceeding 15 months, to determine the effectiveness of the plan; [49 CFR 195.446(e)(4)]

5. monitor the content and volume of general activity being directed to and required of each controller at least once each calendar year, but at intervals not exceeding 15 months, that will assure controllers have sufficient time to

analyze and react to incoming alarms; and [49 CFR 195.446(e)(5)]

6. address deficiencies identified through the implementation of Paragraphs E.1 through E.5 of this Section. [49 CFR 195.446(e)(6)]

F. Change Management. Each operator must assure that changes that could affect control room operations are coordinated with the control room personnel by performing each of the following: [49 CFR 195.446(f)]

1. implement Section 7 of API RP 1168 (incorporated by reference, see §30107) for control room management change and require coordination between control room representatives, operator's management, and associated field personnel when planning and implementing physical changes to pipeline equipment or configuration; and [49 CFR 195.446(f)(1)]

2. require its field personnel to contact the control room when emergency conditions exist and when making field changes that affect control room operations. [49 CFR 195.446(f)(2)]

G. Operating Experience. Each operator must assure that lessons learned from its operating experience are incorporated, as appropriate, into its control room management procedures by performing each of the following. [49 CFR 195.446(g)]

1. Review accidents that must be reported pursuant to §30125 and 30127 to determine if control room actions contributed to the event and, if so, correct, where necessary, deficiencies related to: [49 CFR 195.446(g)(1)]

a. controller fatigue; [49 CFR 195.446(g)(1)(i)]

b. field equipment; [49 CFR 195.446(g)(1)(ii)]

c. the operation of any relief device; [49 CFR 195.446(g)(1)(iii)]

d. procedures; [49 CFR 195.446(g)(1)(iv)]

e. SCADA system configuration; and [49 CFR 195.446(g)(1)(v)]

f. SCADA system performance. [49 CFR 195.446(g)(1)(vi)]

2. Include lessons learned from the operator's experience in the training program required by this Section. [49 CFR 195.446(g)(2)]

H. Training. Each operator must establish a controller training program and review the training program content to identify potential improvements at least once each calendar year, but at intervals not to exceed 15 months. An operator's program must provide for training each controller to carry out the roles and responsibilities defined by the operator. In addition, the training program must include the following elements: [49 CFR 195.446(h)]

1. responding to abnormal operating conditions likely to occur simultaneously or in sequence; [49 CFR 195.446(h)(1)]

2. use of a computerized simulator or non-computerized (tabletop) method for training controllers to recognize abnormal operating conditions; [49 CFR 195.446(h)(2)]

3. training controllers on their responsibilities for communication under the operator's emergency response procedures; [49 CFR 195.446(h)(3)]

4. training that will provide a controller a working knowledge of the pipeline system, especially during the

development of abnormal operating conditions; and [49 CFR 195.446(h)(4)]

5. for pipeline operating setups that are periodically, but infrequently used, providing an opportunity for controllers to review relevant procedures in advance of their application. [49 CFR 195.446(h)(5)]

I. Compliance Validation. Upon request, operators must submit their procedures to PHMSA or, in the case of an intrastate pipeline facility regulated by a state, to the appropriate state agency. [49 CFR 195.446(i)]

J. Compliance and Deviations. An operator must maintain for review during inspection: [49 CFR 195.446(j)]

1. records that demonstrate compliance with the requirements of this Section; and [49 CFR 195.446(j)(1)]

2. documentation to demonstrate that any deviation from the procedures required by this Section was necessary for the safe operation of the pipeline facility. [49 CFR 195.446(j)(2)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 38:106 (January 2012).

§30452. Pipeline Integrity Management in High Consequence Areas [49 CFR 195.452]

A. - H.3. ...

4. Special Requirements for Scheduling Remediation [49 CFR 195.452(h)(4)]

a. Immediate Repair Conditions. An operator's evaluation and remediation schedule must provide for immediate repair conditions. To maintain safety, an operator must temporarily reduce operating pressure or shut down the pipeline until the operator completes the repair of these conditions. An operator must calculate the temporary reduction in operating pressure using the formula in Section 451.6.2.2 (b) of ASME/ANSI B31.4 (incorporated by reference, see §30107); An operator must treat the following conditions as immediate repair conditions: [49 CFR 195.452(h)(4)(i)]

H.4a.i. - M.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 29:2830 (December 2003), amended LR 30:1216 (June 2004), LR 33:471 (March 2007), LR 35:2797 (December 2009), LR 38:108 (January 2012).

Subchapter B. Corrosion Control

[49 CFR Part 195 Subpart H]

§30571. What criteria must I use to determine the adequacy of cathodic protection? [49 CFR 195.571]

A. Cathodic protection required by this Subchapter must comply with one or more of the applicable criteria and other considerations for cathodic protection contained in Paragraphs 6.2 and 6.3 of NACE SP 0169 (incorporated by reference, see §30107). [49 CFR 195.571]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 29:2838 (December 2003), amended LR 33:472 (March 2007), LR 38:108 (January 2012).

§30573. What must I do to monitor external corrosion control? [49 CFR 195.573]

A. - A.1. ...

2. Identify not more than two years after cathodic protection is installed, the circumstances in which a close-interval survey or comparable technology is practicable and necessary to accomplish the objectives of Paragraph 10.1.1.3 of NACE SP 0169 (incorporated by reference, see §30107). [49 CFR 195.573(a)(2)]

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 29:2838 (December 2003), amended LR 33:472 (March 2007), LR 35:2798 (December 2009), LR 38:108 (January 2012).

§30588. What standards apply to direct assessment? [49 CFR 195.588]

A. If you use direct assessment on an onshore pipeline to evaluate the effects of external corrosion, you must follow the requirements of this Section for performing external corrosion direct assessment. This Section does not apply to methods associated with direct assessment, such as close interval surveys, voltage gradient surveys, or examination of exposed pipelines, when used separately from the direct assessment process. [49 CFR 195.588(a)]

B. The requirements for performing external corrosion direct assessment are as follows. [49 CFR 195.588(b)]

1. General. You must follow the requirements of NACE SP0502 (incorporated by reference, see §30107). Also, you must develop and implement a External Corrosion Direct Assessment (ECDA) plan that includes procedures addressing pre-assessment, indirect examination, direct examination, and post-assessment. [49 CFR 195.588(b)(1)]

2. Pre-Assessment. In addition to the requirements in Section 3 of NACE SP0502 (incorporated by reference, see §30107), the ECDA plan procedures for pre-assessment must include: [49 CFR 195.588(b)(2)]

a. provisions for applying more restrictive criteria when conducting ECDA for the first time on a pipeline segment; [49 CFR 195.588(b)(2)(i)]

b. the basis on which you select at least two different, but complementary, indirect assessment tools to assess each ECDA region; and [49 CFR 195.588(b)(2)(ii)]

c. if you utilize an indirect inspection method not described in Appendix A of NACE Standard SP0502 (incorporated by reference, see §30107), you must demonstrate the applicability, validation basis, equipment used, application procedure, and utilization of data for the inspection method. [49 CFR 195.588(b)(2)(iii)]

3. Indirect examination. In addition to the requirements in Section 4 of NACE SP0502 (incorporated by reference, see §30107), the procedures for indirect examination of the ECDA regions must include: [49 CFR 195.588(b)(3)]

a. provisions for applying more restrictive criteria when conducting ECDA for the first time on a pipeline segment; [49 CFR 195.588(b)(3)(i)]

b. criteria for identifying and documenting those indications that must be considered for excavation and direct examination, including at least the following: [49 CFR 195.588(b)(3)(ii)]

i. the known sensitivities of assessment tools; [49 CFR 195.588(b)(3)(ii)(A)]

ii. the procedures for using each tool; and [49 CFR 195.588(b)(3)(ii)(B)]

iii. the approach to be used for decreasing the physical spacing of indirect assessment tool readings when the presence of a defect is suspected; [49 CFR 195.588(b)(3)(ii)(C)]

c. for each indication identified during the indirect examination, criteria for: [49 CFR 195.588(b)(3)(iii)]:

i. defining the urgency of excavation and direct examination of the indication; and [49 CFR 195.588(b)(3)(iii)(A)]

ii. defining the excavation urgency as immediate, scheduled, or monitored; and [49 CFR 195.588(b)(3)(iii)(B)]

d. criteria for scheduling excavations of indications in each urgency level. [49 CFR 195.588(b)(3)(iv)]

4. Direct Examination. In addition to the requirements in section 5 of NACE SP0502 (incorporated by reference, see §30107), the procedures for direct examination of indications from the indirect examination must include: [49 CFR 195.588(b)(4)]

a. provisions for applying more restrictive criteria when conducting ECDA for the first time on a pipeline segment; [49 CFR 195.588(b)(4)(i)]

b. criteria for deciding what action should be taken if either: [49 CFR 195.588(b)(4)(ii)]

i. corrosion defects are discovered that exceed allowable limits (Section 5.5.2.2 of NACE SP0502 (incorporated by reference, see §30107), provides guidance for criteria); or [49 CFR 195.588(b)(4)(ii)(A)]

ii. root cause analysis reveals conditions for which ECDA is not suitable (Section 5.6.2 of NACE SP0502 (incorporated by reference, see §30107), provides guidance for criteria); [49 CFR 195.588(b)(4)(ii)(B)]

c. criteria and notification procedures for any changes in the ECDA plan, including changes that affect the severity classification, the priority of direct examination, and the time frame for direct examination of indications; and [49 CFR 195.588(b)(4)(iii)]

d. criteria that describe how and on what basis you will reclassify and re-prioritize any of the provisions specified in Section 5.9 of NACE SP0502 (incorporated by reference, see §30107). [49 CFR 195.588(b)(4)(iv)]

5. Post Assessment and Continuing Evaluation. In addition to the requirements in Section 6 of NACE SP0502 (incorporated by reference, see §30107), the procedures for post assessment of the effectiveness of the ECDA process must include: [49 CFR 195.588(b)(5)]

a. measures for evaluating the long-term effectiveness of ECDA in addressing external corrosion in pipeline segments; and [49 CFR 195.588(b)(5)(i)]

b. criteria for evaluating whether conditions discovered by direct examination of indications in each ECDA region indicate a need for reassessment of the pipeline segment at an interval less than that specified in Sections 6.2 and 6.3 of NACE SP0502 (see Appendix D of NACE SP0502) (incorporated by reference, see §30107). [49 CFR 195.588(b)(5)(ii)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division,

LR 33:472 (March 2007), amended LR 35:2799 (December 2009), LR 38:108 (January 2012).

Chapter 309. Transportation of Hazardous Liquids by Pipeline—Appendices [49 CFR Part 195]

§30901. Reserved.

§30903. Reserved.

§30905. Appendix C to Subpart 3—Guidance for Implementation of Integrity Management Program [49 CFR Part 195 Appendix C]

A. This appendix gives guidance to help an operator implement the requirements of the integrity management program rule in §30450 and §30452. Guidance is provided on:

1. information an operator may use to identify a high consequence area and factors an operator can use to consider the potential impacts of a release on an area;

2. risk factors an operator can use to determine an integrity assessment schedule;

3. safety risk indicator tables for leak history, volume or line size, age of pipeline, and product transported, an operator may use to determine if a pipeline segment falls into a high, medium or low risk category;

4. types of internal inspection tools an operator could use to find pipeline anomalies;

5. measures an operator could use to measure an integrity management program's performance;

6. types of records an operator will have to maintain; and

7. types of conditions that an integrity assessment may identify that an operator should include in its required schedule for evaluation and remediation.

I. Identifying a High Consequence Area and Factors for Considering a Pipeline Segment's Potential Impact on a High Consequence Area

A. The rule defines a high consequence area as a high population area, another populated area, an unusually sensitive area, or a commercially navigable waterway. The Office of Pipeline Safety (OPS) will map these areas on the National Pipeline Mapping System (NPMS). An operator, member of the public, or other government agency may view and download the data from the NPMS home page <http://www.npms.phmsa.gov/>. OPS will maintain the NPMS and update it periodically. However, it is an operator's responsibility to ensure that it has identified all high consequence areas that could be affected by a pipeline segment. An operator is also responsible for periodically evaluating its pipeline segments to look for population or environmental changes that may have occurred around the pipeline and to keep its program current with this information. (Refer to §30452.D.3.) For more information to help in identifying high consequence areas, an operator may refer to:

I.A.1. - VII.F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 29:2840 (December 2003), repromulgated LR 30:260 (February 2004), amended LR 30:1217 (June 2004), LR 38:109 (January 2012).

James H. Welsh
Commissioner

1201#014

RULE

Department of Natural Resources Office of Conservation

Natural Gas Pipeline Safety
(LAC 43:XIII.Chapters 3-51)

The Louisiana Office of Conservation amended LAC 43:XIII.101 et seq. in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to power delegated under the laws of the state of Louisiana and particularly Title 30 of the Louisiana Revised Statutes of 1950, section 30:501 et seq. This Rule amends the minimum pipeline safety requirements for natural gas pipelines.

There will be negligible cost to directly affected persons or natural gas pipeline operators. Benefits will be realized by persons living and working near natural gas pipelines through safer construction and operation standards imposed by the rule amendments. Moreover, Louisiana presently receives federal funds and pipeline inspection fees to administer the Natural Gas Pipeline Safety Program. Failure to amend the Louisiana rules to make them consistent with federal regulations would cause the state to lose federal funding.

Title 43

NATURAL RESOURCES

Part XIII. Office of Conservation-Pipeline Safety

Subpart 2. Transportation of Natural Gas and Other Gas by Pipeline [49 CFR Part 191]

Chapter 3. Annual Reports, Incident Reports and Safety Related Condition Reports [49 CFR Part 191]

§301. Scope [49 CFR 191.1]

A. - B.3. ...

4. Onshore Gathering of Gas— [49 CFR 191.1 (b)(4)]
 - a. through a pipeline that operates at less than 0 psig (0 kPa); [49 CFR 191.1(b)(4)(i)]
 - b. through a pipeline that is not a regulated onshore gathering line (as determined in §508 of this Part); and [191.(b)(4)(ii)]
 - c. within inlets of the Gulf of Mexico, except for the requirements in §2712. [191.1(b)(4)(iii)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:218 (April 1983), amended LR 10:510 (July 1984), LR 11:255 (March 1985), LR 18:854 (August 1992), LR 27:1536 (September 2001), LR 30:1220 (June 2004), LR 33:473 (March 2007), LR 38:110 (January 2012).

§303. Definitions

[49 CFR 191.3]

A. As used in Part XIII and in the PHMSA Forms referenced in this Part [49 CFR 191.3]:

* * *

Incident—any of the following events:

- a. an event that involves a release of gas from a pipeline, or of liquefied natural gas, liquefied petroleum gas, refrigerant gas, or gas from an LNG facility, and that results in one or more of the following consequences:
 - i. a death, or personal injury necessitating in-patient hospitalization;

- ii. estimated property damage of \$50,000 or more, including loss to the operator and others, or both, but excluding cost of gas lost;

- iii. unintentional estimated gas loss of three million cubic feet or more;

- b. an event that results in an emergency shutdown of an LNG facility. Activation of an emergency shutdown system for reasons other than an actual emergency does not constitute an incident;

- c. an event that is significant in the judgment of the operator, even though it did not meet the criteria of Subparagraphs a or b of this definition.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 11:255 (March 1985), amended LR 18:854 (August 1992), LR 20:442 (April 1994), LR 27:1536 (September 2001), LR 30:1221 (June 2004), LR 33:473 (March 2007), LR 38:110 (January 2012).

§305. Immediate Notice of Certain Incidents [49 CFR 191.5]

A. ...

B. Each notice required by Subsection A of this Section must be made to the National Response Center either by telephone to (800) 424- 8802 (in Washington, DC, 202 267-2675) or electronically at [http:// www.nrc.uscg.mil](http://www.nrc.uscg.mil) and by telephone to the State of Louisiana to (225) 342-5585 (day) or (225) 342-5505 (after working hours) and must include the following information: [49 CFR 191.5(b)]

1 - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:218 (April 1983), amended LR 10:510 (July 1984), LR 11:255 (March 1985), LR 20:442 (April 1994), LR 30:1221 (June 2004), LR 38:110 (January 2012).

§307. Report Submission Requirements [49 CFR 191.7]

A. General. Except as provided in Subsection B of this Section, an operator must submit each report required by this part electronically to the Pipeline and Hazardous Materials Safety Administration at <http://opsweb.phmsa.dot.gov> unless an alternative reporting method is authorized in accordance with Subsection D of this Section. [49 CFR 191.7(a)]

1. Each report required by §307.A, for intrastate facilities subject to the jurisdiction of the Office of Conservation, must also be submitted to Office of Conservation, P.O. Box 94275, Baton Rouge, LA 70804-9275.

- a. Annual report information must only include data for intrastate facilities subject to the jurisdiction of the Office of Conservation.

- B. Exceptions. An operator is not required to submit a safety-related condition report (§325) or an offshore pipeline condition report (§327) electronically. [49 CFR 191.7(b)]

- C. Safety-Related Conditions. An operator must submit concurrently to the applicable State agency a safety-related condition report required by §323 for intrastate pipeline transportation or when the State agency acts as an agent of the secretary with respect to interstate transmission facilities. [49 CFR 191.7(c)]

D. Alternative Reporting Method. If electronic reporting imposes an undue burden and hardship, an operator may submit a written request for an alternative reporting method to the Information Resources Manager, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, PHP-20, 1200 New Jersey Avenue, SE, Washington DC 20590. The request must describe the undue burden and hardship. PHMSA will review the request and may authorize, in writing, an alternative reporting method. An authorization will state the period for which it is valid, which may be indefinite. An operator must contact PHMSA at (202) 366-8075, or electronically to informationresourcesmanager@dot.gov or make arrangements for submitting a report that is due after a request for alternative reporting is submitted but before an authorization or denial is received. [49 CFR 191.7(d)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:219 (April 1983), amended LR 10:510 (July 1984), LR 11:255 (March 1985), LR 20:442 (April 1994), LR 27:1536 (September 2001), LR 30:1221 (June 2004), LR 31:679 (March 2005), LR 33:473 (March 2007), LR 35:2800 (December 2009), LR 38:110 (January 2012).

§309. Distribution System: Incident Report [49 CFR 191.9]

A. - B. ...

C. Master meter operators are not required to submit an incident report as required by this Section. [49 CFR 191.9(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:219 (April 1983), amended LR 10:510 (July 1984), LR 11:255 (March 1985), LR 30:1222 (June 2004), LR 38:111 (January 2012).

§311. Distribution System: Annual Report [49 CFR 191.11]

A. General. Except as provided in Subsection B of this Section, each operator of a distribution pipeline system must submit an annual report for that system on DOT Form PHMSA F 7100.1-1. This report must be submitted each year, not later than March 15, for the preceding calendar year. [49 CFR 191.11(a)]

B. Not Required. The annual report requirement in this Section does not apply to a master meter system or to a petroleum gas system that serves fewer than 100 customers from a single source. [49 CFR 191.11(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:219 (April 1983), amended LR 10:511 (July 1984), LR 11:255 (March 1985), LR 30:1222 (June 2004), LR 38:111 (January 2012).

§312. Distribution Systems: Mechanical Fitting Failure Reports [49 CFR 191.12]

A. Each mechanical fitting failure, as required by §3509 of this part, must be submitted on a Mechanical Fitting Failure Report Form PHMSA F- 7100.1-2. An operator must submit a mechanical fitting failure report for each mechanical fitting failure that occurs within a calendar year not later than March 15 of the following year (for example, all mechanical failure reports for calendar year 2011 must be submitted no later than March 15, 2012). Alternatively, an

operator may elect to submit its reports throughout the year. In addition, an operator must also report this information to the State pipeline safety authority if a state has obtained regulatory authority over the operator's pipeline. [49 CFR 191.12]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 38:111 (January 2012).

§315. Transmission Systems; Gathering Systems; and Liquefied Natural Gas Facilities: Incident Report [49 CFR 191.15]

A. Transmission or Gathering. Each operator of a transmission or a gathering pipeline system must submit DOT Form PHMSA F 7100.2 as soon as practicable but not more than 30 days after detection of an incident required to be reported under §305 of this Chapter. [49 CFR 191.15(a)]

B. LNG. Each operator of a liquefied natural gas plant or facility must submit DOT Form PHMSA F 7100.3 as soon as practicable but not more than 30 days after detection of an incident required to be reported under §305 of this Chapter. [49 CFR 191.15(b)]

C. Supplemental Report. Where additional related information is obtained after a report is submitted under Subsection A or B of this Section, the operator must make a supplemental report as soon as practicable with a clear reference by date to the original report. [49 CFR 191.15(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:219 (April 1983), amended LR 10:511 (July 1984), LR 11:255 (March 1985), LR 30:1222 (June 2004), LR 38:111 (January 2012).

§317. Transmission Systems; Gathering Systems; and Liquefied Natural Gas Facilities: Annual Report [49 CFR 191.17]

A. Transmission or Gathering. Each operator of a transmission or a gathering pipeline system must submit an annual report for that system on DOT Form PHMSA 7100.2.1. This report must be submitted each year, not later than March 15, for the preceding calendar year, except that for the 2010 reporting year the report must be submitted by June 15, 2011. [49 CFR 191.17(a)]

B. LNG. Each operator of a liquefied natural gas facility must submit an annual report for that system on DOT Form PHMSA 7100.3-1 This report must be submitted each year, not later than March 15, for the preceding calendar year, except that for the 2010 reporting year the report must be submitted by June 15, 2011. [49 CFR 191.17(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:219 (April 1983), amended LR 10:511 (July 1984), LR 11:256 (March 1985), LR 30:1222 (June 2004), LR 38:111 (January 2012).

§319. Report Forms [49 CFR 191.19]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:219 (April 1983), amended LR 10:511 (July 1984), LR 11:256 (March 1985), LR

20:442 (April 1994), LR 24:1307 (July 1998), LR 30:1222 (June 2004), LR 38:111 (January 2012).

§321. OMB Control Number Assigned to Information Collection [49 CFR 191.21]

A. This Section displays the control number assigned by the Office of Management and Budget (OMB) to the information collection requirements in Part 191. The Paperwork Reduction Act requires agencies to display a current control number assigned by the Director of OMB for each agency information collection requirement. [49 CFR 191.21]

OMB Control Number 2137-0522	
Section of 49 CFR Part 191 Where Identified	Form No.
191.5	Telephonic
191.9	PHMSA7100.1, PHMSA7100.3
191.11	PHMSA7100.1-1, PHMSA7100.3-1
191.15	PHMSA7100.2
191.17	PHMSA7100.2-1
191.22	PHMSA1000.1

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 11:256 (March 1985), amended LR 20:442 (April 1994), LR 30:1222 (June 2004), LR 38:112 (January 2012).

§ 322. National Registry of Pipeline and LNG Operators [49 CFR 191.22]

A. OPID Request. Effective January 1, 2012, each operator of a gas pipeline, gas pipeline facility, LNG plant or LNG facility must obtain from PHMSA an Operator Identification Number (OPID). An OPID is assigned to an operator for the pipeline or pipeline system for which the operator has primary responsibility. To obtain an OPID, an operator must complete an OPID Assignment Request DOT Form PHMSA F 1000.1 through the National Registry of Pipeline and LNG Operators in accordance with §307. [49 CFR 191.22(a)]

B. OPID Validation. An operator who has already been assigned one or more OPID by January 1, 2011, must validate the information associated with each OPID through the National Registry of Pipeline and LNG Operators at <http://opsweb.phmsa.dot.gov>, and correct that information as necessary, no later than June 30, 2012. [49 CFR 191.22(b)]

C. Changes. Each operator of a gas pipeline, gas pipeline facility, LNG plant or LNG facility must notify PHMSA electronically through the National Registry of Pipeline and LNG Operators at <http://opsweb.phmsa.dot.gov> of certain events. For intrastate facilities subject to the jurisdiction of the Office of Conservation, a copy must also be submitted to Office of Conservation, P.O. Box 94275, Baton Rouge, LA 70804-9275. [49 CFR 191.22(c)]

1. An operator must notify PHMSA of any of the following events not later than 60 days before the event occurs: [49 CFR 191.22(c)(1)]

a. construction or any planned rehabilitation, replacement, modification, upgrade, uprate, or update of a facility, other than a section of line pipe, that costs \$10 million or more. If 60 day notice is not feasible because of

an emergency, an operator must notify PHMSA as soon as practicable; [49 CFR 191.22(c)(1)(i)]

b. construction of 10 or more miles of a new pipeline; or [49 CFR 191.22(c)(1)(ii)]

c. construction of a new LNG plant or LNG facility. [49 CFR 191.22(c)(1)(iii)]

2. An operator must notify PHMSA of any of the following events not later than 60 days after the event occurs: [49 CFR 191.22(c)(2)]

a. a change in the primary entity responsible (i.e., with an assigned OPID) for managing or administering a safety program required by this part covering pipeline facilities operated under multiple OPIDs. [49 CFR 191.22(c)(2)(i)]

b. a change in the name of the operator; [49 CFR 191.22(c)(2)(ii)]

c. a change in the entity (e.g., company, municipality) responsible for an existing pipeline, pipeline segment, pipeline facility, or LNG facility; [49 CFR 191.22(c)(2)(iii)]

d. the acquisition or divestiture of 50 or more miles of a pipeline or pipeline system subject to Subpart 3 of this Part; or [49 CFR 191.22(c)(2)(iv)]

e. the acquisition or divestiture of an existing LNG plant or LNG facility subject to Part 193. [49 CFR 191.22(c)(2)(v)]

D. Reporting. An operator must use the OPID issued by PHMSA for all reporting requirements covered under this subchapter and for submissions to the National Pipeline Mapping System. [49 CFR 191.22(d)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 38:112 (January 2012).

Subpart 3. Transportation of Natural Gas or Other Gas by Pipeline: Minimum Safety Standards [49 CFR Part 192]

Chapter 5. General [Subpart A]

§503. Definitions [49 CFR 192.3]

A. As used in this Part:

Abandoned—permanently removed from service.

Active Corrosion—continuing corrosion that, unless controlled, could result in a condition that is detrimental to public safety.

Administrator—the administrator, Pipeline and Hazardous Materials Safety Administration or his or her delegate.

Alarm—an audible or visible means of indicating to the controller that equipment or processes are outside operator-defined, safety-related parameters.

Control Room—an operations center staffed by personnel charged with the responsibility for remotely monitoring and controlling a pipeline facility.

Controller—a qualified individual who remotely monitors and controls the safety-related operations of a pipeline facility via a SCADA system from a control room, and who has operational authority and accountability for the remote operational functions of the pipeline facility.

Electrical Survey—a series of closely spaced pipe-to-soil readings over pipelines which are subsequently analyzed

to identify locations where a corrosive current is leaving the pipeline.

* * *

Pipeline Environment—includes soil resistivity (high or low), soil moisture (wet or dry), soil contaminants that may promote corrosive activity, and other known conditions that could affect the probability of active corrosion.

* * *

Supervisory Control and Data Acquisition (SCADA) System—a computer-based system or systems used by a controller in a control room that collects and displays information about a pipeline facility and may have the ability to send commands back to the pipeline facility.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:1224 (June 2004), amended LR 31:679 (March 2005), LR 33:474 (March 2007), LR 35:2800 (December 2009), LR 38:112 (January 2012).

§507. What Documents are Incorporated by Reference Partly or Wholly in this Part? [49 CFR 192.7]

A. ...

B. All incorporated materials are available for inspection in the Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC, 20590-0001, 202-366-4595, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030 or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. These materials have been approved for incorporation by reference by the director of the *Federal Register* in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. In addition, the incorporated materials are available from the respective organizations listed in Paragraph C.1 of this Section. [49 CFR 192.7(b)]

C. - C.1.i. ...

2. Documents Incorporated by Reference (numbers in parentheses indicate applicable editions). [49 CFR 192.7(c)(2)]

Source and Name of Referenced Material	Title 43 Reference
A. Pipeline Research Council International (PRCI):	
(1) AGA Pipeline Research Committee, Project PR-3-805, "A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe"(December 22, 1989). The RSTRENG program may be used for calculating remaining strength.	§§ 2137.C; 3333.A.1; 3333.D.1.a;
B. American Petroleum Institute (API):	
(1) ANSI/API Specification 5L/ISO 3183 "Specification for Line Pipe" (43rd edition and errata, 2004, and 44th edition, 2007), includes errata (January 2009) and addendum (February 2009)	§§ 705.E; 912; 913; §5103 Item I
(2) API Recommended Practice 5L1 "Recommended Practice for Railroad Transportation of Line Pipe" (6th edition, July 2002)	§715.A.1
(3) API Recommended Practice 5LW, "Transportation of Line Pipe on Barges and Marine Vessels" (2nd edition, December 1996, effective March 1, 1997)	§715.B

Source and Name of Referenced Material	Title 43 Reference
(4) API Specification 6D "Pipeline Valves" (23rd edition (April 2008, effective October 1, 2008) and errata 3 (includes 1 and 2, February 2009)).	§1105.A
(5) API Recommended Practice 80 (API RP 80) "Guidelines for the Definition of Onshore Gas Gathering Lines" (1st edition, April 2000)	§508.A; 508.A.1; 508.A.2; 508.A.3; 508.A.4
(6) API 1104 "Welding of Pipelines and Related Facilities" (20th edition, October 2005, errata/addendum, (July 2007) and errata 2 (2008))	§§1305; 1307.A; 1309.C.1; 1321.C; 5103 Item II
(7) API Recommended Practice 1162 "Public Awareness Programs for Pipeline Operators," (1st edition, December 2003)	§2716.A; 2716.B; 2716.C
(8) API Recommended Practice 1165 "Recommended Practice for Pipeline SCADA Displays," (API RP 1165) First edition (January 2007)	§2731. C.1
C. American Society for Testing and Materials (ASTM):	
(1) ASTM Designation: A 53/A53M-07"Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc Coated, Welded and Seamless" (September 1, 2007)	§§913; 5103 Item I
(2) ASTM Designation: A106/A106M-08"Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service" (July 15, 2008)	§§913; 5103 Item I
(3) ASTM A333/A333M-05 (2005) "Standard Specification for Seamless and Welded Steel Pipe for Low- Temperature Service"	§§913; 5103 Item I
(4) ASTM A372/A372M-03 (reapproved 2008),"Standard Specification for Carbon and Alloy Steel Forgings for Thin-Walled Pressure Vessels" (March 1, 2008)	§1137.B.1
(5) ASTM A381-96 (Reapproved 2005) "Standard Specification for Metal-Arc-Welded Steel Pipe for Use With High-Pressure Transmission Systems" (October 1, 2005).	§§ 913; 5103 Item I
(6) ASTM A 578/A578M-96 (Re- approved 2001) "Standard Specification for Straight-Beam Ultrasonic Examination of Plain and Clad Steel Plates for Special Applications"	§ 912.C.2.iii
(7) ASTM A671-06 "Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures" (May 1, 2006)	§§ 913; 5103 Item I
(8) ASTM A672-08 "Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures" (May 1, 2008)	§§ 913; 5103 Item I
(9) ASTM A691-98 (Reapproved 2007)"Standard Specification for Carbon and Alloy Steel Pipe, Electric-Fusion-Welded for High- Pressure Service at High Temperatures" (November 1, 2007)	§§ 913; 5103 Item I
(10) ASTM D638-03 "Standard Test Method for Tensile Properties of Plastics"	§§ 1513.A.3; 1513.B.1
(11) ASTM D2513-87 "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings"	§ 713.A.1
(12) ASTM D2513-99 "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings	§§ 923.E.2; 1151.B; 1511.B.2; 1513.A.1.a; 5103 Item I
(13) ASTM D 2517-00 "Standard Specification for Reinforced Epoxy Resin Gas Pressure Pipe and Fittings"	§§ 1151.A; 1511.D.1; 1513.A.1.b; 5103 Item I
(14) ASTM F1055-1998 "Standard Specification for Electrofusion Type Polyethylene Fittings for Outside Diameter Controller Polyethylene Pipe and Tubing"	§ 1513.A.1.c

Source and Name of Referenced Material	Title 43 Reference
D. ASME International (ASME):	
(1) ASME/ANSI B16.1-2005 "Gray Iron Pipe Flanges and Flanged Fittings" (Classes 25, 125, and 250)" (August 31, 2006)	§ 1107.C
(2) ASME/ANSI B16.5-2003 "Pipe Flanges and Flanged Fittings" (October 2004)	§§ 1107.A; 1509
(3) ASME/ANSI B31G-1991 (Reaffirmed 2004)"Manual for Determining the Remaining Strength of Corroded Pipelines"	§§ 2137.C; 3333.A
(4) ASME/ANSI B31.8-2007 "Gas Transmission and Distribution Piping Systems" (November 30, 2007)	§2719.A.1.a.
(5) ASME/ANSI B31.8S-2004 "Supplement to B31.8 on Managing System Integrity of Gas Pipelines"	§§ 3303.C; 3307.B; 3311.A; 3311.A.9; 3311.A.11; 3311.A.12; 3311.A.13; 3313.A; 3313.B.1; 3317.A; 3317.B; 3317.C; 3317.E.1; 3317.E.4; 3321.A.1; 3323.B.1; 3323.B.2; 3323.B.3; 3325.B; 3325.B.1; 3325.B.2; 3325.B.3; 3325.B.4; 3327.B; 3327.C.1.a; 3329.B.1; 3329.B.2; 3333.A; 3333.D.1; 3333.D.1.a; 3335.A; 3335.B.1.d; 3337.C.1; 3339.A.1.a.i; 3339.A.1.a.ii; 3339.A.1.c; 3345.A
(6) 2007 ASME Boiler and Pressure Vessel Code, Section I, "Rules for Construction of Power Boilers 2007" (2007 edition July 1, 2007)	§ 1113.A
(7) 2007 ASME Boiler and Pressure Vessel Code, Section VIII, Division 1, "Rules for Construction of Pressure Vessels 2" (2007 edition, July 1, 2007)	§§ 1113.A; 1113.B; 1113.D; 1125.B.3
(8) 2007 ASME Boiler and Pressure Vessel Code, Section VIII, Division 2, "Alternative Rules, Rules for Construction of Pressure Vessels" (2007 edition, July 1, 2007)	§§1113.B; 1125.B.3
(9) 2007 ASME Boiler and Pressure Vessel Code, Section IX, "Welding and Brazing, Procedures, Welders, Brazers, and Welding and Brazing Operators" (2007 edition, July 1, 2007)	§§ 1307.A; 5103 Item II
E. Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS):	
(1) MSS SP-44-2006 Standard Practices, "Steel Pipe Line Flanges" (2006 edition)	§ 1107.A
(2) [Reserved]	
F. National Fire Protection Association (NFPA):	
(1) NFPA 30 (2008 edition, August 15, 2007) "Flammable and Combustible Liquids Code" (2008 edition; approved August 15, 2007)	§2935.B
(2) NFPA 58 (2004) "Liquefied Petroleum Gas Code (LP-Gas Code)"	§§ 511.A; 511.B; 511.C
(3) NFPA 59 (2004) "Utility LP-Gas Plant Code"	§§ 511.A; 511.B; 511.C
(4) NFPA 70 (2008) "National Electrical Code" (NEC 2008) (Approved August 15, 2007)	§§ 1123.E; 1149.C
G. Plastics Pipe Institute, Inc. (PPI):	
(1) PPI TR-3/2008 HDB/HDS/PDB/SDB/MRS Policies (2008), "Policies and Procedures for Developing Hydrostatic Design Bases (HDB), Pressure Design Bases (PDB), Strength Design Basis (SDB), and Minimum Required Strength (MRS) Ratings for Thermoplastic Piping Materials or Pipe" (May 2008)	§921

Source and Name of Referenced Material	Title 43 Reference
H. NACE International (NACE):	
(1) NACE Standard SP0502-2008, Standard Practice, "Pipeline External Corrosion Direct Assessment Methodology" (reaffirmed March 20, 2008)	§§ 3323.B.1; 3325.B; 3325.B.1; 3325.B.1.b; 3325.B.2; 3325.B.3; 3325.B.3.b; 3325.B.3.d; 3325.B.4; 3325.B.4.b; 3331.D; 3335.B.1.d; 3339.A.2
I. Gas Technology Institute (GTI):	
(1) GRI 02/0057 (2002) "Internal Corrosion Direct Assessment of Gas Transmission Pipelines Methodology"	§ 3327.C.2;

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:1226 (June 2004), amended LR 31:680 (March 2005), LR 33:474 (March 2007), LR 35:2801 (December 2009), LR 38:113 (January 2012).

Chapter 7. Materials [Subpart B]

§713. Marking of Materials

[49 CFR 192.63]

A. ...

1. as prescribed in the specification or standard to which it was manufactured, except that thermoplastic fittings must be marked in accordance with ASTM D 2513-87 (incorporated by reference, see §507); [49 CFR 192.63(a)(1)]

2. to indicate size, material, manufacturer, pressure rating, and temperature rating, and as appropriate, type, grade, and model. [49 CFR 192.63(a)(2)]

B. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:221 (April 1983), amended LR 10:512 (July 1984), LR 18:854 (August 1992), LR 20:443 (April 1994), LR 24:1308 (July 1998), LR 30:1229 (June 2004), LR 38:114 (January 2012).

§715. Transportation of Pipe [49 CFR 192.65]

A. Railroad. In a pipeline to be operated at a hoop stress of 20 percent or more of SMYS, an operator may not use pipe having an outer diameter to wall thickness ratio of 70 to 1, or more, that is transported by railroad unless: [49 CFR 192.65(a)]

1. the transportation is performed in accordance with API Recommended Practice 5L1 (incorporated by reference, see §507); [49 CFR 192.65(a)(1)]

2. in the case of pipe transported before November 12, 1970, the pipe is tested in accordance with Chapter 23 of this Subpart to at least 1.25 times the maximum allowable operating pressure if it is to be installed in a Class 1 location and to at least 1.5 times the maximum allowable operating pressure if it is to be installed in a Class 2, 3, or 4 location. Notwithstanding any shorter time period permitted under Chapter 23 of this Subpart, the test pressure must be maintained for at least eight hours. [49 CFR 192.65(a)(2)]

B. Ship or Barge. In a pipeline to be operated at a hoop stress of 20 percent or more of SMYS, an operator may not use pipe having an outer diameter to wall thickness ratio of 70 to 1, or more, that is transported by ship or barge on both

inland and marine waterways unless the transportation is performed in accordance with API Recommended Practice 5LW (incorporated by reference, see §507). [49 CFR 192.65(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:221 (April 1983), amended LR 10:513 (July 1984), LR 20:444 (April 1994), LR 30:1229 (June 2004), LR 38:114 (January 2012).

Chapter 9. Pipe Design [Subpart C]

§912. Additional Design Requirements for Steel Pipe Using Alternative Maximum Allowable Operating Pressure. [49 CFR 192.112]

A. - A.1.c.ii. ...

(a). An ultrasonic test of the ends and at least 35 percent of the surface of the plate/coil or pipe to identify imperfections that impair serviceability such as laminations, cracks, and inclusions. At least 95 percent of the lengths of pipe manufactured must be tested. For all pipelines designed after December 22, 2008, the test must be done in accordance with ASTM A578/A578M Level B, or API 5L paragraph 7.8.10 (incorporated by reference, see §507) or equivalent method, and either [49 CFR 192.112(c)(2)(i)]

c.ii.(b). - e.i. ...

ii. Pipe in operation prior to December 22, 2008, must have been hydrostatically tested at the mill at a test pressure corresponding to a hoop stress of 90 percent SMYS for 10 seconds. [49 CFR 192.112(e)(2)]

f. - h.iii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 35:2802 (December 2009), amended LR 38:115 (January 2012).

§921. Design of Plastic Pipe [49 CFR 192.121]

A. Subject to the limitations of §923, the design pressure for plastic pipe is determined by either of the following formulas:

$$P = 2S \frac{t}{D - t} (DF)$$

$$P = \frac{2S}{(SDR - 1)} (DF)$$

where:

P = Design pressure, gauge, psig (kPa)

S = For thermoplastic pipe, the HDB is determined in accordance with the listed specification at a temperature equal to 73 °F (23°C), 100°F (38°C), 120°F (49°C), or 140°F (60°C).

In the absence of an HDB established at the specified temperature, the HDB of a higher temperature may be used in determining a design pressure rating at the specified temperature by arithmetic interpolation using the procedure in Part D.2 of PPI TR-3/2008, HDB/PDB/SDB/MRS Policies", (incorporated by reference, see §507). For reinforced thermosetting plastic pipe, 11,000 psig (75,842 kPa). [Note: Arithmetic interpolation is not allowed for PA-11 pipe.]

t = Specified wall thickness, in. (mm)

D = Specified outside diameter, in (mm)

SDR = Standard dimension ratio, the ratio of the average specified outside diameter to the minimum specified wall thickness, corresponding to a value from a common numbering system that was derived from the American National Standards Institute preferred number series 10.

DF = 0.32 or = 0.40 for PA-11 pipe produced after January 23, 2009 with a nominal pipe size (IPS or CTS) 4-inch or less,

and a SDR of 11 or greater (i.e. thicker pipe wall) [49 CFR 192.121]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:222 (April 1983), amended LR 10:515 (July 1984), LR 18:855 (August 1992), LR 24:1308 (July 1998), LR 27:1538 (September 2001), LR 30:1231 (June 2004), LR 31:682 (March 2005), LR 33:478 (March 2007), LR 35:2804 (December 2009), LR 38:115 (January 2012).

§923. Design Limitations for Plastic Pipe [49 CFR 192.123]

A. - D ...

E. The design pressure for thermoplastic pipe produced after July 14, 2004 may exceed a gauge pressure of 100 psig (689 kPa) provided that: [49 CFR 192.123(e)]

1. the design pressure does not exceed 125 psig (862 kPa); [49 CFR 192.123(e)(1)]

2. the material is a PE2406 or a PE3408 as specified within ASTM D2513-99 (incorporated by reference, see §507); [49 CFR 192.123(e)(2)]

E.3. - F.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:222 (April 1983), amended LR 10:515 (July 1984), LR 24:1308 (July 1998), LR 27:1538 (September 2001), LR 30:1231 (June 2004), LR 31:682 (March 2005), LR 33:478 (March 2007), LR 35:2804 (December 2009), LR 38:115 (January 2012).

Chapter 11. Design of Pipeline Components [Subpart D]

§1105. Valves [49 CFR 192.145]

A. - C. ...

D. No valve having shell (body, bonnet, cover, and/or end flange) components made of ductile iron may be used at pressures exceeding 80 percent of the pressure ratings for comparable steel valves at their listed temperature. However, a valve having shell components made of ductile iron may be used at pressures up to 80 percent of the pressure ratings for comparable steel valves at their listed temperature, if: [49 CFR 192.145(d)]

1. - 2. ...

E. No valve having shell (body, bonnet, cover, and/or end flange) components made of cast iron, malleable iron, or ductile iron may be used in the gas pipe components of compressor stations. [49 CFR 192.145(e)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:223 (April 1983), amended LR 10:515 (July 1984), LR 18:855 (August 1992), LR 27:1539 (September 2001), LR 30:1232 (June 2004), LR 31:682 (March 2005), LR 33:479 (March 2007), LR 38:115 (January 2012).

§1151. Design Pressure of Plastic Fittings [49 CFR 192.191]

A. Thermosetting fittings for plastic pipe must conform to ASTM D 2517, (incorporated by reference, see §507). [49 CFR 192.191(a)]

B. Thermoplastic fittings for plastic pipe must conform to ASTM D 2513-99, (incorporated by reference, see §507). [49 CFR 192.191(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:226 (April 1983), amended LR 10:518 (July 1984), LR 30:1238 (June 2004), LR 38:115 (January 2012).

Chapter 15. Joining of Materials Other Than by Welding [Subpart F]

§1511. Plastic Pipe [49 CFR 192.281]

A. - B.1. ...

2. The solvent cement must conform to ASTM D 2513-99, (incorporated by reference, see §5077). [49 CFR 192.281(b)(2)]

B.3. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:231 (April 1983), amended LR 10:523 (July 1984), LR 20:445 (April 1994), LR 24:1309 (July 1998), LR 30:1243 (June 2004), LR 38:116 (January 2012).

§1513. Plastic Pipe: Qualifying Joining Procedures [49 CFR 192.283]

A. - A.1. ...

a. in the case of thermoplastic pipe, Paragraph 6.6 (sustained pressure test) or Paragraph 6.7 (Minimum Hydrostatic Burst Test) or Paragraph 8.9 (Sustained Static pressure Test) of ASTM D2513-99 (incorporated by reference, see §507); [49 CFR 192.283(a)(1)(i)]

b. in the case of thermosetting plastic pipe, paragraph 8.5 (minimum hydrostatic burst pressure) or paragraph 8.9 (sustained static pressure test) of ASTM D2517 (incorporated by reference, see §507); or [49 CFR 192.283(a)(1)(ii)]

c. in the case of electrofusion fittings for polyethylene pipe (PE) and tubing, paragraph 9.1 (minimum hydraulic burst pressure test), paragraph 9.2 (sustained pressure test), paragraph 9.3 (tensile strength test), or paragraph 9.4 (joint integrity tests) of ASTM Designation F1055 (incorporated by reference, see §507) [49 CFR 192.283(a)(1)(iii)]

A.2. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:231 (April 1983), amended LR 10:523 (July 1984), LR 20:445 (April 1994), LR 24:1310 (July 1998), LR 27:1541 (September 2001), LR 30:1244 (June 2004), LR 31:683 (March 2005), LR 33:479 (March 2007), LR 38:116 (January 2012).

Chapter 19. Customer Meters, Service Regulators, and Service Lines [Subpart H]

§1933. Excess Flow Valve Customer Installation [49 CFR 192.383]

A. Definitions. As used in this Section: [49 CFR 192.383(a)]

Replaced Service Line—a natural gas service line where the fitting that connects the service line to the main is replaced or the piping connected to this fitting is replaced;

Service Line Serving Single-family Residence—a natural gas service line that begins at the fitting that connects the service line to the main and serves only one single-family residence.

B. Installation Required. An excess flow valve (EFV) installation must comply with the performance standards in §1931. The operator must install an EFV on any new or replaced service line serving a single-family residence after February 2, 2010, unless one or more of the following conditions is present: [49 CFR 192.383(b)]

1. the service line does not operate at a pressure of 10 psig or greater throughout the year; [49 CFR 192.383(b)(1)]

2. the operator has prior experience with contaminants in the gas stream that could interfere with the EFV's operation or cause loss of service to a residence; [49 CFR 192.383(b)(2)]

3. an EFV could interfere with necessary operation or maintenance activities, such as blowing liquids from the line; or [49 CFR 192.383(b)(3)]

4. an EFV meeting performance standards in §1931 is not commercially available to the operator. [49 CFR 192.383(b)(4)]

C. Reporting. Each operator must report the EFV measures detailed in the annual report required by §311 of this Part. [49 CFR 192.383(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 27:1544 (September 2001), amended LR 30:1251 (June 2004), LR 38:116 (January 2012).

Chapter 21. Requirements for Corrosion Control [Subpart I]

§2117. External Corrosion Control: Monitoring [49 CFR 192.465]

A. - D. ...

E. After the initial evaluation required by of §2107.B and C and §2109.B, each operator must, not less than every three years at intervals not exceeding 39 months, reevaluate its unprotected pipelines and cathodically protect them in accordance with this Chapter in areas in which active corrosion is found. The operator must determine the areas of active corrosion by electrical survey. However, on distribution lines and where an electrical survey is impractical on transmission lines, areas of active corrosion may be determined by other means that include review and analysis of leak repair and inspection records, corrosion monitoring records, exposed pipe inspection records, and the pipeline environment. [49 CFR 192.465(e)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:236 (April 1983), amended LR 10:528 (July 1984), LR 27:1545 (September 2001), LR 30:1253 (June 2004), LR 38:116 (January 2012).

Chapter 27. Operations [Subpart L]

§2705. Procedural Manual for Operations, Maintenance, and Emergencies [49 CFR 192.605]

A. - B.11. ...

12. implementing the applicable control room management procedures required by §2731. [49 CFR 192.605(b)(12)]

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:240 (April 1983), amended LR 10:532 (July 1984), LR 21:822 (August 1995), LR 30:1260 (June 2004), LR 38:116 (January 2012).

§2715. Emergency Plans [49 CFR 192.615]

A. - A.10. ...

11. actions required to be taken by a controller during an emergency in accordance with §2731. [49 CFR 192.615(a)(11)]

B. - C.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:241 (April 1983), amended LR 10:534 (July 1984), LR 21:822 (August 1995), LR 30:1263 (June 2004), LR 38:117 (January 2012).

§2716. Public Awareness [49 CFR 192.616]

A. ...

B. The operator's program must follow the general program recommendations of API RP 1162 and assess the unique attributes and characteristics of the operator's pipeline and facilities, Except as stated in Paragraph B.1 [49 CFR 192.616(b)].

1. Regulatory inspections are not an acceptable alternative to conducting an annual audit for measuring program implementation as mentioned in API RP 1162 section 8.3.

C. - J.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 21:823 (August 1995), amended LR 30:1264 (June 2004), LR 33:480 (March 2007), LR 35:2807 (December 2009), LR 38:117 (January 2012).

§2720 Alternative Maximum Allowable Operating Pressure for Certain Steel Pipelines [49 CFR 192.620]

A. - A.1. ...

a. For facilities installed prior to December 22, 2008, for which §911.B, C, or D applies, use the following design factors as alternatives for the factors specified in those Subsections: §911.B-0.67 or less; 911.C and D-0.56 or less. [49 CFR 192.620(a)(1)(i)]

2. The alternative maximum allowable operating pressure is the lower of the following: [49 CFR 192.620(a)(2)]

a. the design pressure of the weakest element in the pipeline segment, determined under Chapters 9 and 11 of this Subpart; [49 CFR 192.620(a)(2)(i)]

b. the pressure obtained by dividing the pressure to which the pipeline segment was tested after construction by a factor determined in the following table: [49 CFR 192.620(a)(2)(ii)]

Class Location	Alternative Test Factor
1	1.25
2	1.50
3	1.50

1 For Class 2 alternative maximum allowable operating pressure segments installed prior to December 22, 2008, the alternative test factor is 1.25.

B. - B.2. ...

3. A supervisory control and data acquisition system provides remote monitoring and control of the pipeline

segment. The control provided must include monitoring of pressures and flows, monitoring compressor start-ups and shut-downs, and remote closure of valves per Subparagraph D.1.c of this Section; [49 CFR 192.620(b)(3)]

4. - 6. ...

7. At least 95 percent of girth welds on a segment that was constructed prior to December 22, 2008, must have been non-destructively examined in accordance with §1323.B and C. [49 CFR 192.620(b)(7)]

C. - C.4.a ...

b. for a pipeline segment in existence prior to December 22, 2008, certify, under Paragraph C.2 of this Section, that the strength test performed under §2305 was conducted at a test pressure calculated under Subsection A of this Section, or conduct a new strength test in accordance with Subparagraph C.4.a of this Section. [49 CFR 192.620(c)(4)(ii)]

5. Comply with the additional operation and maintenance requirements described in Subsection D of this Section. [49 CFR 192.620(c)(5)]

6. If the performance of a construction task associated with implementing alternative MAOP that occurs after December 22, 2008, can affect the integrity of the pipeline segment, treat that task as a "covered task", notwithstanding the definition in §3101.B and implement the requirements of Chapter 31 as appropriate. [49 CFR 192.620(c)(6)]

C.7. - D.1.c. ...

i. ensure that the identification of high consequence areas reflects the larger potential impact circle recalculated under Clause D.1.b.i of this Section; [49 CFR 192.620(d)(3)(i)]

c.ii. - e.iii. ...

iv. use cleaning pigs and sample accumulated liquids. Use inhibitors when corrosive gas or liquids are present. [49 CFR 192.620(d)(5)(iv)]

e.v. - g.ii. ...

iii. within six months after completing the baseline internal inspection required under Subparagraph D.1.i of this Section, integrate the results of the indirect assessment required under Clause D.1.g.i of this Section with the results of the baseline internal inspection and take any needed remedial actions; [49 CFR 192.620(d)(7)(iii)]

iv. for all pipeline segments in high consequence areas, perform periodic assessments as follows: [49 CFR 192.620(d)(7)(iv)]

(a). conduct periodic close interval surveys with current interrupted to confirm voltage drops in association with periodic assessments under Chapter 33 of this Subpart: [49 CFR 192.620(d)(7)(iv)(A)]

(b). locate pipe-to-soil test stations at half-mile intervals within each high consequence area ensuring at least one station is within each high consequence area, if practicable; [49 CFR 192.620(d)(7)(iv)(B)]

(c). integrate the results with those of the baseline and periodic assessments for integrity done under Subparagraphs D.1.i and D.1.j of this Section; [49 CFR 192.620(d)(7)(iv)(C)]

h. controlling external corrosion through cathodic protection: [49 CFR 192.620(d)(8)]

i. if an annual test station reading indicates cathodic protection below the level of protection required in Chapter 21 of this Subpart, complete remedial action within

six months of the failed reading or notify each PHMSA pipeline safety regional office where the pipeline is in service demonstrating that the integrity of the pipeline is not compromised if the repair takes longer than 6 months. An operator must also notify a state pipeline safety authority when the pipeline is located in a state where PHMSA has an interstate agent agreement, or an intrastate pipeline is regulated by that state; and [49 CFR 192.620(d)(8)(i)]

ii. after remedial action to address a failed reading, confirm restoration of adequate corrosion control by a close interval survey on either side of the affected test station to the next test station unless the reason for the failed reading is determined to be a rectifier connection or power input problem that can be remediated and otherwise verified; [49 CFR 192.620(d)(8)(ii)]

iii. if the pipeline segment has been in operation, the cathodic protection system on the pipeline segment must have been operational within 12 months of the completion of construction; [49 CFR 192.620(d)(8)(iii)]

i. conducting a baseline assessment of integrity; [49 CFR 192.620(d)(9)]

i. except as provided in Clause D.1.i.iii of this Section, for a new pipeline segment operating at the new alternative maximum allowable operating pressure, perform a baseline internal inspection of the entire pipeline segment as follows: [49 CFR 192.620(d)(9)(i)]

(a). assess using a geometry tool after the initial hydrostatic test and backfill and within six months after placing the new pipeline segment in service; and [49 CFR 192.620(d)(9)(i)(A)]

(b). assess using a high resolution magnetic flux tool within three years after placing the new pipeline segment in service at the alternative maximum allowable operating pressure; [49 CFR 192.620(d)(9)(i)(B)]

ii. except as provided in Clause D.1.i.iii of this Section, for an existing pipeline segment, perform a baseline internal assessment using a geometry tool and a high resolution magnetic flux tool before, but within two years prior to, raising pressure to the alternative maximum allowable operating pressure as allowed under this Section; [49 CFR 192.620(d)(9)(ii)]

iii. if headers, mainline valve by-passes, compressor station piping, meter station piping, or other short portion of a pipeline segment operating at alternative maximum allowable operating pressure cannot accommodate a geometry tool and a high resolution magnetic flux tool, use direct assessment (per §3325, §3327 and/or §3329) or pressure testing (per Chapter 23 of this Subpart) to assess that portion; [49 CFR 192.620(d)(9)(iii)]

j. conducting periodic assessments of integrity: [49 CFR 192.620(d)(10)]

i. determine a frequency for subsequent periodic integrity assessments as if all the alternative maximum allowable operating pressure pipeline segments were covered by Chapter 33 of this Subpart; and [49 CFR 192.620(d)(10)(i)]

ii. conduct periodic internal inspections using a high resolution magnetic flux tool on the frequency determined under Clause D.1.j.i of this Section, or [49 CFR 192.620(d)(10)(ii)]

iii. use direct assessment (per §3325, §3327 and/or §3329) or pressure testing (per Chapter 23 of this

Subpart) for periodic assessment of a portion of a segment to the extent permitted for a baseline assessment under Clause D.1.i.iii of this Section;

k. making repairs: [49 CFR 192.620(d)(11)]

i. perform the following when evaluating an anomaly: [49 CFR 192.620(d)(11)(i)]

(a). use the most conservative calculation for determining remaining strength or an alternative validated calculation based on pipe diameter, wall thickness, grade, operating pressure, operating stress level, and operating temperature; and [49 CFR 192.620(d)(11)(i)(A)]

(b). take into account the tolerances of the tools used for the inspection; [49 CFR 192.620(d)(11)(i)(B)]

ii. repair a defect immediately if any of the following apply: [49 CFR 192.620(d)(11)(ii)]

(a). the defect is a dent discovered during the baseline assessment for integrity under Subparagraph D.1.i of this Section and the defect meets the criteria for immediate repair in §1709.B; [49 CFR 192.620(d)(11)(ii)(A)]

(b). the defect meets the criteria for immediate repair in §3333.D; [49 CFR 192.620(d)(11)(ii)(B)]

(c). the alternative maximum allowable operating pressure was based on a design factor of 0.67 under Subsection A of this Section and the failure pressure is less than 1.25 times the alternative maximum allowable operating pressure; [49 CFR 192.620(d)(11)(ii)(C)]

(d). the alternative maximum allowable operating pressure was based on a design factor of 0.56 under Subsection A of this Section and the failure pressure is less than or equal to 1.4 times the alternative maximum allowable operating pressure; [49 CFR 192.620(11)(ii)(D)]

iii. if Clause D.1.k.ii of this Section does not require immediate repair, repair a defect within one year if any of the following apply: [49 CFR 192.620(d)(11)(iii)]

(a). the defect meets the criteria for repair within one year in §3333.D; [49 CFR 192.620(d)(11)(iii)(A)]

(b). the alternative maximum allowable operating pressure was based on a design factor of 0.80 under Subsection A of this Section and the failure pressure is less than 1.25 times the alternative maximum allowable operating pressure; [49 CFR 192.620(d)(11)(iii)(B)]

(c). the alternative maximum allowable operating pressure was based on a design factor of 0.67 under Subsection A of this Section and the failure pressure is less than 1.50 times the alternative maximum allowable operating pressure; [49 CFR 192.620(d)(11)(iii)(C)]

(d). the alternative maximum allowable operating pressure was based on a design factor of 0.56 under Subsection A of this Section and the failure pressure is less than or equal to 1.80 times the alternative maximum allowable operating pressure; [49 CFR 192.620(d)(11)(iii)(D)]

iv. evaluate any defect not required to be repaired under Clause D.1.k.ii or iii of this Section to determine its growth rate, set the maximum interval for repair or re-inspection, and repair or re-inspect within that interval. [49 CFR 192.620(d)(11)(iv)]

E. Is there any change in overpressure protection associated with operating at the alternative maximum allowable operating pressure? Notwithstanding the required capacity of pressure relieving and limiting stations otherwise

required by §1161, if an operator establishes a maximum allowable operating pressure for a pipeline segment in accordance with Subsection A of this Section, an operator must: [49 CFR 192.620(e)]

1. provide overpressure protection that limits mainline pressure to a maximum of 104 percent of the maximum allowable operating pressure; and [49 CFR 192.620(e)(1)]

2. develop and follow a procedure for establishing and maintaining accurate set points for the supervisory control and data acquisition system. [49 CFR 192.620(e)(2)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 35:2807 (December 2009), amended LR 38:117 (January 2012).

§2731. Control room management. [49 CFR 192.631]

A. General [49 CFR 192.631(a)]

1. This Section applies to each operator of a pipeline facility with a controller working in a control room who monitors and controls all or part of a pipeline facility through a SCADA system. Each operator must have and follow written control room management procedures that implement the requirements of this Section, except that for each control room where an operator's activities are limited to either or both of: [49 CFR 192.631(a)(1)]

a. distribution with less than 250,000 services; or [49 CFR 192.631(a)(1)(i)]

b. transmission without a compressor station, the operator must have and follow written procedures that implement only Subsections D (regarding fatigue), I (regarding compliance validation), and J (regarding compliance and deviations) of this Section. [49 CFR 192.631(a)(1)(ii)]

2. The procedures required by this Section must be integrated, as appropriate, with operating and emergency procedures required by §§2705 and 2715. An operator must develop the procedures no later than August 1, 2011, and must implement the procedures according to the following schedule. The procedures required by Subsections and Paragraphs B, C.5, D.2, D.3, F and G of this Section must be implemented no later than October 1, 2011. The procedures required by Paragraphs C.1 through C.4, D.1, D.4, and E must be implemented no later than August 1, 2012. The training procedures required by Subsection H must be implemented no later than August 1, 2012, except that any training required by another Paragraph of this Section must be implemented no later than the deadline for that Paragraph. [49 CFR 192.631(a)(2)]

B. Roles and responsibilities. Each operator must define the roles and responsibilities of a controller during normal, abnormal, and emergency operating conditions. To provide for a controller's prompt and appropriate response to operating conditions, an operator must define each of the following: [49 CFR 192.631(b)]

1. a controller's authority and responsibility to make decisions and take actions during normal operations; [49 CFR 192.631(b)(1)]

2. a controller's role when an abnormal operating condition is detected, even if the controller is not the first to detect the condition, including the controller's responsibility to take specific actions and to communicate with others; [49 CFR 192.631(b)(2)]

3. a controller's role during an emergency, even if the controller is not the first to detect the emergency, including the controller's responsibility to take specific actions and to communicate with others; and [49 CFR 192.631(b)(3)]

4. a method of recording controller shift-changes and any hand-over of responsibility between controllers. [49 CFR 192.631(b)(4)]

C. Provide Adequate Information. Each operator must provide its controllers with the information, tools, processes and procedures necessary for the controllers to carry out the roles and responsibilities the operator has defined by performing each of the following: [49 CFR 192.631(c)]

1. implement sections 1, 4, 8, 9, 11.1, and 11.3 of API RP 1165 (incorporated by reference, see §507) whenever a SCADA system is added, expanded or replaced, unless the operator demonstrates that certain provisions of sections 1, 4, 8, 9, 11.1, and 11.3 of API RP 1165 are not practical for the SCADA system used; [49 CFR 192.631(c)(1)]

2. conduct a point-to-point verification between SCADA displays and related field equipment when field equipment is added or moved and when other changes that affect pipeline safety are made to field equipment or SCADA displays; [49 CFR 192.631(c)(2)]

3. test and verify an internal communication plan to provide adequate means for manual operation of the pipeline safely, at least once each calendar year, but at intervals not to exceed 15 months; [49 CFR 192.631(c)(3)]

4. test any backup SCADA systems at least once each calendar year, but at intervals not to exceed 15 months; and [49 CFR 192.631(c)(4)]

5. establish and implement procedures for when a different controller assumes responsibility, including the content of information to be exchanged. [49 CFR 192.631(c)(5)]

D. Fatigue Mitigation. Each operator must implement the following methods to reduce the risk associated with controller fatigue that could inhibit a controller's ability to carry out the roles and responsibilities the operator has defined: [49 CFR 192.631(d)]

1. establish shift lengths and schedule rotations that provide controllers off-duty time sufficient to achieve eight hours of continuous sleep; [49 CFR 192.631(d)(1)]

2. educate controllers and supervisors in fatigue mitigation strategies and how off-duty activities contribute to fatigue; [49 CFR 192.631(d)(2)]

3. train controllers and supervisors to recognize the effects of fatigue; and [49 CFR 192.631(d)(3)]

4. establish a maximum limit on controller hours-of-service, which may provide for an emergency deviation from the maximum limit if necessary for the safe operation of a pipeline facility. [49 CFR 192.631(d)(4)]

E. Alarm Management. Each operator using a SCADA system must have a written alarm management plan to provide for effective controller response to alarms. An operator's plan must include provisions to: [49 CFR 192.631(e)]

1. review SCADA safety-related alarm operations using a process that ensures alarms are accurate and support safe pipeline operations; [49 CFR 192.631(e)(1)]

2. identify at least once each calendar month points affecting safety that have been taken off scan in the SCADA host, have had alarms inhibited, generated false alarms, or

that have had forced or manual values for periods of time exceeding that required for associated maintenance or operating activities; [49 CFR 192.631(e)(2)]

3. verify the correct safety-related alarm set-point values and alarm descriptions at least once each calendar year, but at intervals not to exceed 15 months; [49 CFR 192.631(e)(3)]

4. review the alarm management plan required by this paragraph at least once each calendar year, but at intervals not exceeding 15 months, to determine the effectiveness of the plan; [49 CFR 192.631(e)(4)]

5. monitor the content and volume of general activity being directed to and required of each controller at least once each calendar year, but at intervals not to exceed 15 months, that will assure controllers have sufficient time to analyze and react to incoming alarms; and [49 CFR 192.631(e)(5)]

6. address deficiencies identified through the implementation of Paragraphs E.1 through E.5 of this Section. [49 CFR 192.631(e)(6)]

F. Change Management. Each operator must assure that changes that could affect control room operations are coordinated with the control room personnel by performing each of the following: [49 CFR 192.631(f)]

1. establish communications between control room representatives, operator's management, and associated field personnel when planning and implementing physical changes to pipeline equipment or configuration; [49 CFR 192.631(f)(1)]

2. require its field personnel to contact the control room when emergency conditions exist and when making field changes that affect control room operations; and [49 CFR 192.631(f)(2)]

3. seek control room or control room management participation in planning prior to implementation of significant pipeline hydraulic or configuration changes. [49 CFR 192.631(f)(3)]

G. Operating Experience. Each operator must assure that lessons learned from its operating experience are incorporated, as appropriate, into its control room management procedures by performing each of the following: [49 CFR 192.631(g)]

1. review incidents that must be reported pursuant to Subpart 2 of this Part to determine if control room actions contributed to the event and, if so, correct, where necessary, deficiencies related to: [49 CFR 192.631(g)(1)]

a. controller fatigue; [49 CFR 192.631(g)(1)(i)]

b. field equipment; [49 CFR 192.631(g)(1)(ii)]

c. the operation of any relief device; [49 CFR 192.631(g)(1)(iii)]

d. procedures; [49 CFR 192.631(g)(1)(iv)]

e. SCADA system configuration; and [49 CFR 192.631(g)(1)(v)]

f. SCADA system performance; [49 CFR 192.631(g)(1)(vi)]

2. include lessons learned from the operator's experience in the training program required by this Section. [49 CFR 192.631(g)(2)]

H. Training. Each operator must establish a controller training program and review the training program content to identify potential improvements at least once each calendar year, but at intervals not to exceed 15 months. An operator's

program must provide for training each controller to carry out the roles and responsibilities defined by the operator. In addition, the training program must include the following elements: [49 CFR 192.631(h)]

1. responding to abnormal operating conditions likely to occur simultaneously or in sequence; [49 CFR 192.631(h)(1)]

2. use of a computerized simulator or non-computerized (tabletop) method for training controllers to recognize abnormal operating conditions; [49 CFR 192.631(h)(2)]

3. training controllers on their responsibilities for communication under the operator's emergency response procedures; [49 CFR 192.631(h)(3)]

4. training that will provide a controller a working knowledge of the pipeline system, especially during the development of abnormal operating conditions; and [49 CFR 192.631(h)(4)]

5. for pipeline operating setups that are periodically, but infrequently used, providing an opportunity for controllers to review relevant procedures in advance of their application. [49 CFR 192.631(h)(5)]

I. Compliance Validation. Upon request, operators must submit their procedures to PHMSA or, in the case of an intrastate pipeline facility regulated by a state, to the appropriate state agency. [49 CFR 192.631(i)]

J. Compliance and Deviations. An operator must maintain for review during inspection: [49 CFR 192.631(j)]

1. records that demonstrate compliance with the requirements of this Section; and [49 CFR 192.631(j)(1)]

2. documentation to demonstrate that any deviation from the procedures required by this Section was necessary for the safe operation of a pipeline facility. [49 CFR 192.631(j)(2)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 38:119 (January 2012).

Chapter 29. Maintenance [Subpart M]

§2911. Transmission Lines: General Requirements for Repair Procedures [49 CFR 192.711]

A. Temporary Repairs. Each operator shall take immediate temporary measures to protect the public whenever: [49 CFR 192.711(a)]

1. a leak, imperfection, or damage that impairs its serviceability is found in a segment of steel transmission line operating at or above 40 percent of the SMYS; and [49 CFR 192.711(a)(1)]

2. it is not feasible to make a permanent repair at the time of discovery. [49 CFR 192.711(a)(2)]

B. Permanent Repairs. An operator must make permanent repairs on its pipeline system according to the following. [49 CFR 192.711(b)]

1. Non Integrity Management Repairs. The operator must make permanent repairs as soon as feasible. [49 CFR 192.711(b)(1)]

2. Integrity Management Repairs. When an operator discovers a condition on a pipeline covered under Chapter 33-Gas Transmission Pipeline Integrity Management, the operator must remediate the condition as prescribed by §3333.D. [49 CFR 192.711(b)(2)]

C. Welded Patch. Except as provided in §2917.A.2.c, no operator may use a welded patch as a means of repair. [49 CFR 192.711(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:245 (April 1983), amended LR 10:537 (July 1984), LR 27:1548 (September 2001), LR 30:1268 (June 2004), LR 38:120 (January 2012).

Chapter 33. Gas Transmission Pipeline Integrity Management [Subpart O]

§3323. How Is Direct Assessment Used and for What Threats? [49 CFR 192.923]

A. - B. ...

1. ASME/ANSI B31.8S (incorporated by reference, see §507), section 6.4; NACE SP0502-2008 NACE RP0502-2002 (incorporated by reference, see §507); and §3325 if addressing external corrosion (ECDA); [49 CFR 192.923(b)(1)]

B.2. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:1278 (June 2004), LR 38:121 (January 2012).

§3325. What Are the Requirements for Using External Corrosion Direct Assessment (ECDA)? [49 CFR 192.925]

A. ...

B. General Requirements. An operator that uses direct assessment to assess the threat of external corrosion must follow the requirements in this Section, in ASME/ANSI B31.8S (incorporated by reference, see §507), section 6.4, and in NACE SP0502-2008 (incorporated by reference, see §507). An operator must develop and implement a direct assessment plan that has procedures addressing preassessment, indirect examination, direct examination, and post-assessment. If the ECDA detects pipeline coating damage, the operator must also integrate the data from the ECDA with other information from the data integration (§3317.B) to evaluate the covered segment for the threat of third party damage, and to address the threat as required by §3317.E.1 [49 CFR 192.925(b)].

1. Preassessment. In addition to the requirements in ASME/ANSI B31.8S section 6.4 and NACE SP0502-2008, section 3, the plan's procedures for preassessment must include: [49 CFR 192.925(b)(1)]

a. provisions for applying more restrictive criteria when conducting ECDA for the first time on a covered segment; and [49 CFR 192.925(b)(1)(i)]

b. the basis on which an operator selects at least two different, but complementary indirect assessment tools to assess each ECDA Region. If an operator utilizes an indirect inspection method that is not discussed in appendix A of NACE SP0502-2008, the operator must demonstrate the applicability, validation basis, equipment used, application procedure, and utilization of data for the inspection method. [49 CFR 192.925(b)(1)(ii)]

2. Indirect Examination. In addition to the requirements in ASME/ANSI B31.8S section 6.4 and NACE SP0502-2008, section 4, the plan's procedures for indirect examination of the ECDA regions must include: [49 CFR 192.925(b)(2)]

a. provisions for applying more restrictive criteria when conducting ECDA for the first time on a covered segment; [49 CFR 192.925(b)(2)(i)]

b. criteria for identifying and documenting those indications that must be considered for excavation and direct examination. Minimum identification criteria include the known sensitivities of assessment tools, the procedures for using each tool, and the approach to be used for decreasing the physical spacing of indirect assessment tool readings when the presence of a defect is suspected; [49 CFR 192.925(b)(2)(ii)]

c. criteria for defining the urgency of excavation and direct examination of each indication identified during the indirect examination. These criteria must specify how an operator will define the urgency of excavating the indication as immediate, scheduled or monitored; and [49 CFR 192.925(b)(2)(iii)]

d. criteria for scheduling excavation of indications for each urgency level. [49 CFR 192.925(b)(2)(iv)]

3. Direct Examination. In addition to the requirements in ASME/ANSI B31.8S section 6.4 and NACE SP0502-2008, section 5, the plan's procedures for direct examination of indications from the indirect examination must include: [49 CFR 192.925(b)(3)]

a. provisions for applying more restrictive criteria when conducting ECDA for the first time on a covered segment; [49 CFR 192.925(b)(3)(i)]

b. criteria for deciding what action should be taken if either: [49 CFR 192.925(b)(3)(ii)]

i. corrosion defects are discovered that exceed allowable limits (section 5.5.2.2 of NACE SP0502-2008; or [49 CFR 192.925(b)(3)(ii)(A)]

ii. root cause analysis reveals conditions for which ECDA is not suitable (section 5.6.2 of NACE SP0502-2008); [49 CFR 192.925(b)(3)(ii)(B)]

c. criteria and notification procedures for any changes in the ECDA plan, including changes that affect the severity classification, the priority of direct examination, and the time frame for direct examination of indications; and [49 CFR 192.925(b)(3)(iii)]

d. criteria that describe how and on what basis an operator will reclassify and reprioritize any of the provisions that are specified in section 5.9 of NACE SP0502-2008. [49 CFR 192.925(b)(3)(iv)]

4. Post Assessment and Continuing Evaluation. In addition to the requirements in ASME/ANSI B31.8S section 6.4 and NACE SP0502-2008, section 6, the plan's procedures for post assessment of the effectiveness of the ECDA process must include: [49 CFR 192.925(b)(4)]

a. measures for evaluating the long-term effectiveness of ECDA in addressing external corrosion in covered segments; and [49 CFR 192.925(b)(4)(i)]

b. criteria for evaluating whether conditions discovered by direct examination of indications in each ECDA region indicate a need for reassessment of the covered segment at an interval less than that specified in §3339 (see appendix D of NACE SP0502-2008). [49 CFR 192.925(b)(4)(ii)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:1278 (June 2004), amended LR 31:687 (March 2005), LR

33:484 (March 2007), amended by the Department of Natural Resources, Office of Conservation, LR 38:121 (January 2012).

§3331. How May Confirmatory Direct Assessment (CDA) Be Used? [49 CFR 192.931]

A. - A.3. ...

4. Defects Requiring Near-Term Remediation. If an assessment carried out under Paragraphs 2 or 3 of this Section reveals any defect requiring remediation prior to the next scheduled assessment, the operator must schedule the next assessment in accordance with NACE SP0502-2008 (incorporated by reference, see §507), sections 6.2 and 6.3. If the defect requires immediate remediation, then the operator must reduce pressure consistent with §3333 until the operator has completed reassessment using one of the assessment techniques allowed in §3337. [49 CFR 192.931(d)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:1281 (June 2004), amended by the Department of Natural Resources, Office of Conservation, LR 38:122 (January 2012).

§3335. What Additional Preventive and Mitigative Measures Must an Operator Take? [49 CFR 192.935]

A. - B.1.c. ...

d. monitoring of excavations conducted on covered pipeline segments by pipeline personnel. If an operator finds physical evidence of encroachment involving excavation that the operator did not monitor near a covered segment, an operator must either excavate the area near the encroachment or conduct an above ground survey using methods defined in NACE SP0502-2008 (incorporated by reference, see §507). An operator must excavate, and remediate, in accordance with ANSI/ASME B31.8S and §3333 any indication of coating holidays or discontinuity warranting direct examination [49 CFR 192.935(b)(1)(iv)].

B.2. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:1282 (June 2004), amended LR 31:688 (March 2005), LR 33:485 (March 2007), amended by the Department of Natural Resources, Office of Conservation, LR 38:122 (January 2012).

§3339. What Are the Required Reassessment Intervals? [49 CFR 192.939]

A. - A.1.a.ii.

b. External Corrosion Direct Assessment. An operator that uses ECDA that meets the requirements of this Chapter must determine the reassessment interval according to the requirements in paragraphs 6.2 and 6.3 of NACE SP0502-2008 (incorporated by reference, see §507) [49 CFR 192.939(a)(2)].

A.1.c. - A.2.f. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:1283 (June 2004), amended LR 31:688 (March 2005), LR 33:486 (March 2007), LR 38:122 (January 2012).

§3345. What Methods Must an Operator Use to Measure Program Effectiveness?

[49 CFR 192.945]

A. General. An operator must include in its integrity management program methods to measure whether the program is effective in assessing and evaluating the integrity of each covered pipeline segment and in protecting the high consequence areas. These measures must include the four overall performance measures specified in ASME/ANSI B31.8S (incorporated by reference, see §507 of this Subpart), section 9.4, and the specific measures for each identified threat specified in ASME/ANSI B31.8S, Appendix A. An operator must submit the four overall performance measures as part of the annual report required by §317 of this Part. [49 CFR 192.945(a)].

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:1285 (June 2004), amended LR 31:689 (March 2005), LR 33:487 (March 2007), LR 38:122 (January 2012).

§3351. Where Does an Operator File a Report? [49 CFR 192.951]

A. An operator must file any report required by this Chapter electronically to the Pipeline and Hazardous Materials Safety Administration in accordance with § 307 of this Part. [49 CFR 192.951]

B. Any report required by §3351.A, for intrastate facilities subject to the jurisdiction of the Office of Conservation, must be sent concurrently to the Commissioner of Conservation, Office of Conservation, Pipeline Safety Section, P.O. Box 94279 Baton Rouge, LA 70804-9275.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:1286 (June 2004), amended LR 33:487 (March 2007), LR 35:2812 (December 2009), amended by the Department of Natural Resources, Office of Conservation, LR 38:122 (January 2012).

Chapter 35. Gas Distribution Pipeline Integrity Management (IM) [Subpart P]

§3501. What definitions apply to this chapter? [49 CFR 192.1001]

A. The following definitions apply to this Subpart. [49 CFR 192.1001]

Excavation Damage—any impact that results in the need to repair or replace an underground facility due to a weakening, or the partial or complete destruction, of the facility, including, but not limited to, the protective coating, lateral support, cathodic protection or the housing for the line device or facility.

Hazardous Leak—a leak that represents an existing or probable hazard to persons or property and requires immediate repair or continuous action until the conditions are no longer hazardous.

Integrity Management Plan or *IM Plan*—a written explanation of the mechanisms or procedures the operator will use to implement its integrity management program and to ensure compliance with this chapter.

Integrity Management Program or *IM Program*—an overall approach by an operator to ensure the integrity of its gas distribution system.

Mechanical Fitting—a mechanical device used to connect sections of pipe. The term “Mechanical fitting” applies only to:

- a. stab type fittings;
- b. nut follower type fittings;
- c. bolted type fittings; or
- d. other compression type fittings.

Small LPG Operator—an operator of a liquefied petroleum gas (LPG) distribution pipeline that serves fewer than 100 customers from a single source.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 38:122 (January 2012).

§3503. What do the regulations in this chapter cover?

[49 CFR 192.1003]

A. General. This Chapter prescribes minimum requirements for an IM program for any gas distribution pipeline covered under this subpart, including liquefied petroleum gas systems. A gas distribution operator, other than a master meter operator or a small LPG operator, must follow the requirements in §§3505-3513 of this Chapter. A master meter operator or small LPG operator of a gas distribution pipeline must follow the requirements in §3515 of this Chapter. [49 CFR 192.1003]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 38:123 (January 2012).

§3505. What must a gas distribution operator (other than a master meter or small LPG operator) do to implement this chapter? [49 CFR 192.1005]

A. No later than August 2, 2011 a gas distribution operator must develop and implement an integrity management program that includes a written integrity management plan as specified in §3507. [49 CFR 192.1005]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 38:123 (January 2012).

§3507. What are the required elements of an integrity management plan? [49 CFR 192.1007]

A. A written integrity management plan must contain procedures for developing and implementing the following elements. [49 CFR 192.1007]

1. Knowledge. An operator must demonstrate an understanding of its gas distribution system developed from reasonably available information. [49 CFR 192.1007(a)]

a. Identify the characteristics of the pipeline's design and operations and the environmental factors that are necessary to assess the applicable threats and risks to its gas distribution pipeline. [49 CFR 192.1007(a)(1)]

b. Consider the information gained from past design, operations, and maintenance. [49 CFR 192.1007(a)(2)]

c. Identify additional information needed and provide a plan for gaining that information over time

through normal activities conducted on the pipeline (for example, design, construction, operations or maintenance activities). [49 CFR 192.1007(a)(3)]

d. Develop and implement a process by which the IM program will be reviewed periodically and refined and improved as needed. [49 CFR 192.1007(a)(4)]

e. Provide for the capture and retention of data on any new pipeline installed. The data must include, at a minimum, the location where the new pipeline is installed and the material of which it is constructed. [49 CFR 192.1007(a)(5)]

2. Identify Threats. The operator must consider the following categories of threats to each gas distribution pipeline: corrosion, natural forces, excavation damage, other outside force damage, material, or welds, equipment failure, incorrect operations, and other concerns that could threaten the integrity of its pipeline. An operator must consider reasonably available information to identify existing and potential threats. Sources of data may include, but are not limited to, incident and leak history, corrosion control records, continuing surveillance records, patrolling records, maintenance history, and excavation damage experience. [49 CFR 192.1007(b)]

3. Evaluate and Rank Risk. An operator must evaluate the risks associated with its distribution pipeline. In this evaluation, the operator must determine the relative importance of each threat and estimate and rank the risks posed to its pipeline. This evaluation must consider each applicable current and potential threat, the likelihood of failure associated with each threat, and the potential consequences of such a failure. An operator may subdivide its pipeline into regions with similar characteristics (e.g., contiguous areas within a distribution pipeline consisting of mains, services and other appurtenances; areas with common materials or environmental factors), and for which similar actions likely would be effective in reducing risk. [49 CFR 192.1007(c)]

4. Identify and Implement Measures to Address Risks. Determine and implement measures designed to reduce the risks from failure of its gas distribution pipeline. These measures must include an effective leak management program (unless all leaks are repaired when found). [49 CFR 192.1007(d)]

5. Measure Performance, Monitor Results, and Evaluate Effectiveness [49 CFR 192.1007(e)]

a. Develop and monitor performance measures from an established baseline to evaluate the effectiveness of its IM program. An operator must consider the results of its performance monitoring in periodically re-evaluating the threats and risks. These performance measures must include the following: [49 CFR 192.1007(e)(1)]

i. number of hazardous leaks either eliminated or repaired as required by §2903.C of this Subpart (or total number of leaks if all leaks are repaired when found), categorized by cause; [49 CFR 192.1007(e)(1)(i)]

ii. number of excavation damages; [49 CFR 192.1007(e)(1)(ii)]

iii. number of excavation tickets (receipt of information by the underground facility operator from the notification center); [49 CFR 192.1007(e)(1)(iii)]

iv. total number of leaks either eliminated or repaired, categorized by cause; [49 CFR 192.1007(e)(1)(iv)]

v. number of hazardous leaks either eliminated or repaired as required by §2903.C (or total number of leaks if all leaks are repaired when found), categorized by material; and [49 CFR 192.1007(e)(1)(v)]

vi. any additional measures the operator determines are needed to evaluate the effectiveness of the operator's IM program in controlling each identified threat. [49 CFR 192.1007(e)(1)(vi)]

6. Periodic Evaluation and Improvement. An operator must re-evaluate threats and risks on its entire pipeline and consider the relevance of threats in one location to other areas. Each operator must determine the appropriate period for conducting complete program evaluations based on the complexity of its system and changes in factors affecting the risk of failure. An operator must conduct a complete program re-evaluation at least every five years. The operator must consider the results of the performance monitoring in these evaluations. [49 CFR 192.1007(f)]

7. Report Results. Report, on an annual basis, the four measures listed in Clauses 5.a.i through 5.a.iv of this Section, as part of the annual report required by §311 of this Part. An operator also must report the four measures to the state pipeline safety authority if a state exercises jurisdiction over the operator's pipeline. [49 CFR 192.1007(g)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 38:123 (January 2012).

§3509. What must an operator report when compression couplings fail? [49 CFR 192.1009]

A. Except as provided in Subsection B of this Section, each operator of a distribution pipeline system must submit a report on each mechanical fitting failure, excluding any failure that results only in a nonhazardous leak, on a Department of Transportation Form PHMSA F-7100.1-2. The report(s) must be submitted in accordance with §312 of this Part. [49 CFR 192.1009(a)]

B. The mechanical fitting failure reporting requirements in Subsection A of this Section do not apply to the following: [49 CFR 192.1009(b)]

1. master meter operators; [49 CFR 192.1009(b)(1)]

2. small LPG operator as defined in §3501; or [49 CFR 192.1009(b)(2)]

3. LNG facilities. [49 CFR 192.1009(b)(3)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 38:124 (January 2012).

§3511. What records must an operator keep? [49 CFR 192.1011]

A. An operator must maintain records demonstrating compliance with the requirements of this chapter for at least 10 years. The records must include copies of superseded integrity management plans developed under this chapter. [49 CFR 192.1011]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 38:124 (January 2012).

§3513. When may an operator deviate from required periodic inspections under this subpart? [49 CFR 192.1013]

A. An operator may propose to reduce the frequency of periodic inspections and tests required in this Subpart on the basis of the engineering analysis and risk assessment required by this Chapter. [49 CFR 192.1013(a)]

B. An operator must submit its proposal to the PHMSA Associate Administrator for Pipeline Safety or, in the case of an intrastate pipeline facility regulated by the State, the appropriate state agency. The applicable oversight agency may accept the proposal on its own authority, with or without conditions and limitations, on a showing that the operator's proposal, which includes the adjusted interval, will provide an equal or greater overall level of safety. [49 CFR 192.1013(b)]

C. An operator may implement an approved reduction in the frequency of a periodic inspection or test only where the operator has developed and implemented an integrity management program that provides an equal or improved overall level of safety despite the reduced frequency of periodic inspections. [49 CFR 192.1013(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 38:124 (January 2012).

§3515. What must a master meter or small liquefied petroleum gas (LPG) operator do to implement this chapter? [49 CFR 192.1015]

A. General. No later than August 2, 2011 the operator of a master meter system or a small LPG operator must develop and implement an IM program that includes a written IM plan as specified in Subsection B of this Section. The IM program for these pipelines should reflect the relative simplicity of these types of pipelines. [49 CFR 192.1015(a)]

B. Elements. A written integrity management plan must address, at a minimum, the following elements. [49 CFR 192.1015(b)]

1. Knowledge. The operator must demonstrate knowledge of its pipeline, which, to the extent known, should include the approximate location and material of its pipeline. The operator must identify additional information needed and provide a plan for gaining knowledge over time through normal activities conducted on the pipeline (for example, design, construction, operations or maintenance activities). [49 CFR 192.1015(b)(1)]

2. Identify Threats. The operator must consider, at minimum, the following categories of threats (existing and potential): corrosion, natural forces, excavation damage, other outside force damage, material or weld failure, equipment failure, and incorrect operation. [49 CFR 192.1015(b)(2)]

3. Rank Risks. The operator must evaluate the risks to its pipeline and estimate the relative importance of each identified threat. [49 CFR 192.1015(b)(3)]

4. Identify and Implement Measures to Mitigate Risks. The operator must determine and implement measures designed to reduce the risks from failure of its pipeline. [49 CFR 192.1015(b)(4)]

RULE

**Department of Natural Resources
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Mineral Resources, Alternative Energy Leasing and Dry Hole Credit (LAC 43.I. Chapter 11 and V. Chapter 4)

5. Measure Performance, Monitor Results, and Evaluate Effectiveness. The operator must monitor, as a performance measure, the number of leaks eliminated or repaired on its pipeline and their causes. [49 CFR 192.1015(b)(5)]

6. Periodic Evaluation and Improvement. The operator must determine the appropriate period for conducting IM program evaluations based on the complexity of its pipeline and changes in factors affecting the risk of failure. An operator must re-evaluate its entire program at least every five years. The operator must consider the results of the performance monitoring in these evaluations. [49 CFR 192.1015(b)(6)]

C. Records. The operator must maintain, for a period of at least 10 years, the following records: [49 CFR 192.1015(c)]

1. a written IM plan in accordance with this Section, including superseded IM plans; [49 CFR 192.1015(c)(1)]

2. documents supporting threat identification; and [49 CFR 192.1015(c)(2)]

3. documents showing the location and material of all piping and appurtenances that are installed after the effective date of the operator's IM program and, to the extent known, the location and material of all pipe and appurtenances that were existing on the effective date of the operator's program. [49 CFR 192.1015(c)(3)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 38:124 (January 2012).

Chapter 51. Appendices

§5101. Reserved.

Editor's Note: The text of this Section (§5101) has been moved to §507 of this Part.

§5103. Appendix B—Qualification of Pipe

I. Listed Pipe Specifications

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ASTM D 2513-99—"Thermoplastic pipe and tubing, "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings" (incorporated by reference, see §507)

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II. - III. . . .

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AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 10:541 (July 1984), amended LR 18:859 (August 1992), LR 27:1551, 1552 (September 2001), LR 30:1287 (June 2004), LR 31:689 (March 2005), LR 33:487 (March 2007), LR 35:2813 (December 2009), amended by the Department of Natural Resources, Office of Conservation, LR 38:125 (January 2012).

James H. Welsh
Commissioner

1201#015

Pursuant to the power delegated under the laws of the state of Louisiana and, particularly Title 30 of the Louisiana Revised Statute of 1950, as amended, and in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., the Secretary of the Department of Natural Resources hereby promulgates rules for the Leasing of State Lands and Water Bottoms for the Exploration, Development and Production of Alternative Energy Sources, LAC 43:I. Chapter 11, and has repealed the Dry Hole Credit Program, LAC 43:V. Chapter 4.

The regulation relative to alternative energy details the procedure which will be utilized in administering the leasing of state lands and water bottoms for the exploration, development and production of alternative energy, allowed for by R.S. 30:124. In addition, the repeal of the Chapter relative to the Dry Hole Credit Program will be repealed since the final date for filing applications for the credit was June 30, 2009 per Act 2005, No. 298 and Act 2009, No. 196.

Title 43

NATURAL RESOURCES

Part I. Office of the Secretary

Subpart 1. General

Chapter 11. Leasing State Owned Lands and Water Bottoms for the Exploration, Development and Production of an Alternative Energy Source

§1101. Authority

A. These rules and regulations are promulgated by the state Mineral and Energy Board (Board) in consultation with the Department of Transportation and Development (DOTD) pursuant to the Administrative Procedure Act as authorized by R.S. 41:1734.

B. A Port Authority's denial of the issuance of a state alternative energy source lease (AESL) shall be adjudicated in accordance with the Administrative Procedure Act as set forth at 49:991 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:125 (January 2012).

§1102. Purpose

A. These rules and regulations are promulgated for the following purposes:

1. to implement the provisions and intent of the legislature as set forth in Chapter 14-A of Title 41 of the Louisiana Revised Statutes of 1950;

2. to establish procedures for the issuance and administration of leases for alternative energy source production on state lands and water bottoms;

3. to notify the lessee and third parties of obligations as required in this Chapter;

4. to ensure that alternative energy source activities conducted on state lands or water bottoms for energy related purposes are implemented in a safe and environmentally sound manner, in conformance with state laws, federal laws and other applicable laws and regulations, and the terms of the Alternative Energy Source Lease;

5. to institute reasonable fees for services performed by the Department of Natural Resources (DNR).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:125 (January 2012).

§1103. Wind Energy and Geothermal Energy Alternative Energy Sources

A. The Alternative Energy Source Rules as set forth in Chapter 11, except as provided in §1112 and §1113, do not apply to wind energy or geothermal alternative energy sources.

B. An applicant for a wind energy lease must comply with the requirements as set forth in R.S. 41:1731 et seq.

C. An applicant for a geothermal energy lease must comply with the requirements as set forth in R.S. 30:800 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:126 (January 2012).

§1104. Cash Bonus and Fees for Alternative Energy Source Leases

A. The state shall collect a cash bonus for all AESLs. In addition to the cash bonus, the board, through the Office of Mineral Resources (OMR), shall collect an administrative fee for such leasing in the amount of 10 percent of the total cash bonus paid. Such payments shall be due within 24 hours of award of the state Alternative Energy Lease.

B. The state may collect additional payments for an Alternative Energy Source Lease if authorized by statute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 34:260 (February 2008), LR 38:126 (January 2012).

Subchapter A. General Provision

§1107. Lease Authorization

A. Except as otherwise authorized by law, it will be unlawful for any person or business entity to explore for, drill, develop, construct, operate, or maintain any facility to produce, transport, or support the generation of electricity or other energy product derived from an alternative energy source on any part of state owned lands and water bottoms except under and in accordance with the terms of a lease issued by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:126 (January 2012).

§1108. Acronyms

A. For the purposes of this Chapter, unless the terms are defined in a different Chapter or Subpart, the following acronyms shall apply.

1. OMR—the Office of Mineral Resources serving as staff to the state Mineral and Energy Board.

2. AESL—the state Alternative Energy Source Lease.

3. DNR—the Department of Natural Resources.

4. OSL—the Office of State Lands.

5. DWF—the Department of Wildlife and Fisheries and/or the Wildlife and Fisheries Commission.

6. Board—the State Mineral and Energy Board.

7. FERC—the Federal Energy Regulatory Commission as established pursuant to 42 U.S.C. §7171.

8. AESP—a project requiring an AESL.

9. DOTD—the Department of Transportation and Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:126 (January 2012).

§1109. Definitions

A. For the purposes of this Chapter, unless the terms are defined in a different Chapter or Subpart, the following terms shall have the following meanings. Terms defined in a different Chapter or Section shall have the meaning as defined in that Chapter, Subpart, or Section:

Alternative Energy Source—an energy source other than oil, gas, and other liquid, solid, or gaseous minerals. Including, but not limited to, wind energy, geothermal energy, solar energy, and hydrokinetic energy. It shall not include the cultivation or harvesting of biomass fuels or the use of state land or water bottoms for facilities which utilize biomass fuel to produce energy.

Archaeological Resource—any material remains of human life or activities that are at least 50 years of age and that are of archaeological interest (i.e., capable of providing scientific or humanistic understanding of past human behavior, cultural adaptation, or related topics through the application of scientific or scholarly techniques, such as controlled observation, contextual measurement, controlled collection, analysis, interpretation, and explanation).

Best Available and Safest Technology—the best available and safest technologies recognized within the respective industry, or by government, feasible wherever failure of equipment would have a significant affect on safety, health, or the environment.

Best Management Practices—practices recognized within the respective industry, or by government, as one of the best for achieving the desired output while reducing undesirable outcomes.

Commercial Activities—any and all activities associated with the generation, storage, or transmission of electricity or any other energy product from a project requiring an AESL (hereinafter referred to as “AESP”) on state lands or water bottoms, when such electricity or other energy product is intended for distribution, sale, or other commercial use, including, but not limited to, initial site characterization and assessment, facility construction, and project decommissioning.

Decommissioning—the removal of alternative energy source facilities or any other activity associated with the return of the lease site to a condition pursuant to the requirements of Subpart E of this Chapter. Excluded from this provision are technology-testing activities.

Interstate Commerce—any commercial transaction involving more than one state or the movement of goods with respect to the electric power and energy across state boundaries.

Intrastate Commerce—any commercial transaction or movement of goods with respect to the electric power and energy wholly within the state.

Interstate Transmission—the generation of electric power used for the transmission of electric energy in interstate commerce.

Intrastate Transmission—the generation of electric power used for the transmission of electric energy in intrastate commerce.

Lease Applicant—a person or business entity who is formally seeking an AESL in which the port; harbor and terminal district; or port, harbor, and terminal district has not granted prior written approval for the development of an alternative energy source.

Legal Area—state lands or water bottoms subject to a compromise agreement or legal adjudication.

Lessee—the holder of an AESL granted by the board, including any approved sub-lessee, assignee, or successor, or any person or business entity authorized by the holder of the lease or operator to conduct activities on the lease.

Levee District—defined pursuant to the definition set forth in R.S. 38:281(6).

Marine—the physical, atmospheric, and biological components, conditions, and factors that interactively determine the productivity, state, condition, and quality of the marine ecosystem. These include the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and in the state.

Operator—the individual, business, or other legal entity having control or management of activities on the leased acreage, including, but not limited to, the lessee or a third party designated by the lessee.

Political Subdivision—defined pursuant to the definition set forth in R.S. 42:1102(17).

Port Authority—the governing authority of any port; harbor and terminal district; or port, harbor, and terminal district.

Revenue—a bonus or other similar payment owed and/or paid by the lessee to the lessor as required under the lease. It does not include administrative fees such as those assessed for cost recovery, civil penalties, and forfeiture of financial assurance.

Riverine—relating to or situated on a river or riverbank.

Secretary—the Secretary of the Department of Natural Resources (DNR) or an official authorized to act on the Secretary's behalf.

Significant Archaeological Resource—an archaeological resource that is eligible to be listed in the National Register of Historic Places, as defined in 36 CFR 60.4 or its successor.

Site Assessment Activity—preliminary activity(ies) performed by the lessee for the purpose of characterizing a site on state lands or water bottoms, in preparation of the installation of facilities. Such activities may include, but are not limited to, resource assessment surveys (e.g., meteorological and oceanographic) or technology testing.

State—the state of Louisiana, its agencies, departments, successors, predecessors, legal representatives, officers, agents, employees, and any other party or entity authorized to act on its behalf.

State Agency—defined pursuant to the definition set forth in R.S. 30:151.

Vessel—defined pursuant to the definition set forth in USC Title 1, Section 3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:127 (January 2012).

§1110. Rights Granted Pursuant to an Alternative Energy Source Lease

A. A lease issued under this Section grants the lessee the right, subject to obtaining the necessary approvals, including, but not limited to, those required under the Federal Energy Regulatory Commission (FERC) hydrokinetic energy licensing process, and complying with all provisions of this Section, to occupy, and install and operate facilities on a designated portion of state owned lands or water bottoms for the purpose of conducting:

1. commercial activities related to the production of energy from an alternative energy source;
2. other limited activities that support, result from, or relate to the production of energy from an alternative energy source.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:127 (January 2012).

§1111. Impediment to Louisiana's Waterways

A. The AESP shall not unreasonably adversely impact, impede, obstruct, or interfere with transportation infrastructures, the navigability of any waterway, or the use of the waterway by other users, nor shall it unreasonably interfere with maritime commerce or the recreational use of the waterway.

B. The AESP shall be designed to have minimum impact on the chemical, physical, biological integrity, and safety of the waterway.

C. The DOTD shall review the AESP to identify any unreasonable adverse impacts the AESL will have on transportation and transportation infrastructures and submit its findings to the board prior to the opening of the AESL bid. Failure by DOTD to submit its findings to the board shall indicate to the board that the AESP has no adverse impact on transportation and transportation infrastructures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:127 (January 2012).

§1112. Port Authority Approval Required

A. No AESL which affects the following state owned lands and/or water bottoms shall be advertised or granted without prior written approval of a Port Authority:

1. lands held in title by a Port Authority or held by lease or servitude by a Port Authority;
2. public navigable waters that flow through any lands within the jurisdiction of a Port Authority. Approval pursuant

to this Section shall not be unreasonably withheld unless the lease is detrimental to the needs of commerce and navigation.

B. No Port Authority shall receive compensation for its approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:127 (January 2012).

§1113. Decision of Port Authority

A. After the decision of the Port Authority has been made to either grant or deny the applicant's lease request, the board, through OMR, shall notify the AESL applicant of the Port Authority's decision via certified U. S. Postal Service First Class Mail, return receipt requested.

B. If the AESL request is denied by the Port Authority, the applicant shall have 60 days from receipt of the board notice to request an administrative hearing with the Division of Administrative Law, pursuant to Chapter 13-B, Title 49 of the Louisiana Revised Statutes of 1950 and Chapter 11.

C. The Port Authority shall contract with the Division of Administrative Law to conduct the administrative hearing.

D. The Port Authority which did not grant prior written approval for the proposed AESL shall have the burden of proof at the administrative hearing that the proposed AESL is detrimental to the needs of commerce and navigation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:128 (January 2012).

§1114. Federal Energy Regulatory Commission

A. No AESL for hydrokinetic energy development shall be granted which is inconsistent with the terms of a preliminary permit, license, exemption, or other authorization issued by FERC pursuant to its authority under the Federal Power Act, 16 U.S.C. 791a, et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:128 (January 2012).

§1115. Federal and State Laws

A. The lessee, including successors and assigns, is subject to all applicable laws, statutes, rules, or regulations, whether state or federal, which deal with the subject matter of the lease during the term the AESL is in force and effect, whether in whole or in part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:128 (January 2012).

§1116. Alternative Energy Source Project Design Safeguards

A. The lessee or operator shall design its AESP and conduct all activities in a manner that ensures safety and which will not cause undue harm or damage to any structures and/or natural resources, physical, atmospheric, and biological components, including, but not limited to, those owned by the state, Port Authority, Political Subdivision, or Levee District.

B. The lessee and/or operator shall compile, retain, and make available to the board, DOTD, affected Port Authority, and Levee District, or its authorized representative, within the time specified by the board, any data or information related to the site assessment, design, or operations of the alternative energy source.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:128 (January 2012).

§1117. Rights Granted and/or Denied by an Alternative Energy Source Lease

A. No AESL shall include any rights to explore, drill, mine, develop, or produce for native oil, gas, or other liquid or gaseous hydrocarbons.

B. No usage of state lands or water bottoms for the development of a specific alternative energy source shall unreasonably interfere, as determined by the board, with the rights of oil and gas or other forms of an AESL.

C. The AESL shall not inhibit any activity, right, obligation or duty inherent to an oil and gas lease granted by the board.

D. The AESL shall not prevent the letting of leases of state owned lands or water bottoms for the purpose of developing its natural resources.

E. Notwithstanding any language of the AESL to the contrary, the rights granted exclusively to the alternative energy source lessee shall be subject to the surface usage for coastal restoration, reclamation or conservation projects promulgated, funded or effected through DNR and its divisions, whether solely or in conjunction with other state, local or federal governmental agencies or with private individuals or entities. The alternative energy source lessee, in the exercise of its exclusive rights granted pursuant to the AESL, shall utilize the best available technology so as to minimize interference with any surface usage entailed in the development, construction, and maintenance of coastal restoration, reclamation, and conservation projects.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:128 (January 2012).

§1118. Environmental Safeguards

A. The lessee shall use the best management practice, the highest degree of care, the best available and safest technology and all proper safeguards required to prevent land or water pollution resulting from the construction, transportation, and operations of an alternative energy source.

B. The lessee shall use all means available to recapture escaped pollutants and shall be solely responsible for any and all damages to aquatic or marine or riverine life, wildlife, birds, or any public or private property resulting from the lessee's operations.

C. The lessee shall not discharge trash or debris into state waterways.

D. The lessee shall report all unpermitted discharges of pollutants in violation of federal or state laws to the Department of Environmental Quality, the board, through OMR, and any other appropriate agency, within the time

required by federal, state or local laws, but not more than 24 hours from the occurrence, whichever is earlier.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:128 (January 2012).

§1119. Adherence to Laws and Regulations

A. The lessee shall comply with all applicable environmental laws and regulations and any other federal, state, or local law, regulation, standard, or resolution passed by the board, which may be applicable to alternative energy source activities. The board may require lessee to obtain any environmental or other permits or licenses required before applying for an AESL.

B. The board shall have the option of terminating the AESL agreement should the lessee fail to abide by such rules, regulations and resolutions; provided, however, the board shall give the lessee written notice of any such violation and 10 days in which to correct such violation, in which event, should said violation not be corrected, the board, without further notice, may terminate the AESL agreement.

C. With respect to violations of rules, regulations, or resolutions of the federal government or its agencies, when the state is notified of a violation by the lessee, the board, through OMR, shall notify the lessee and may suspend operations under the AESL agreement while allowing the lessee a reasonable set time to resolve the issues with the appropriate federal authority, and, if resolution is not obtained in a reasonable time, terminate the AESL agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:129 (January 2012).

§1120. Alternative Energy Source Lease Size

A. The board shall determine the size of each lease based on the acreage required to accommodate the anticipated activities. The AESL shall include the minimum area that will allow the lessee sufficient space to develop the AESP and manage activities in a manner that is consistent with the provisions of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:129 (January 2012).

§1121. Construction and Operations Plan (COP)

A. In accordance with the requirements of this Chapter, all AESL applicants must submit to the board, or its authorized representative, a Construction and Operations Plan (COP). The COP shall describe the proposed construction, operations, and conceptual decommissioning plans under the AESL, and shall:

1. describe all planned facilities the lessee will construct and use for the AESP, including onshore and support facilities;

2. describe all proposed activities, including the proposed construction activities, commercial operations, and conceptual decommissioning plans for all planned facilities, including onshore and support facilities;

3. certify that the AESP conforms to all applicable laws, implementing regulations, lease provisions, and stipulations or conditions;

4. certify that the AESP does not cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, riverine, or human environment; or sites, structures, or objects of historical or archaeological significance;

5. Certify that the AESP does not unreasonably adversely impact, interfere or impede the navigability of waterways nor interfere with the dredging or maintenance of a waterway for navigation purposes.

6. certify that the AESP does not unreasonably adversely impact, interfere or impede other users of a waterway;

7. certify and demonstrate as needed that the AESP uses the best management practices and the best available and safest technology;

8. provide a detailed explanation showing how the AESP will not damage state owned lands and water bottoms and port authority facilities or property and public or private property such as bridges, docks, and piers;

9. provide a detailed explanation of the waterway marking system that the lessee shall install to aid navigation by marking obstructions in the navigable waters of the state.

B. The board, through OMR, shall review the COP submitted by the lease applicant to determine if the COP contains all the required information. Additional information may be requested if it is determined that the information provided is not complete. If the lease applicant fails to provide the requested information, the AESL application may be denied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:129 (January 2012).

§1122. Navigation Aid

A. The alternative energy source lessee shall construct, maintain, and operate at its own expense such lights and signals as may be directed by either FERC or the secretary of the department in which the Coast Guard is operating, and as may be required by the Port Authority or DOTD. The Port Authority or DOTD may only impose stricter navigation aid standards than those required by FERC or the Coast Guard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:129 (January 2012).

§1123. State Indemnity

A. The alternative energy source lessee shall defend, indemnify and hold harmless the state (and its designated officials) and its political subdivisions against any expenses, losses, costs, damages, claims (including, without limitation, claims for loss of life or illness to persons, or for damage to property), actions, proceedings, or liabilities of any kind, character or type arising out of or in any way connected to the AESL agreement as allowed by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:129 (January 2012).

§1124. Easements and Rights-of-Way

A. The lessee shall be responsible for securing authorization, easements, rights-of-way, leases or permission necessary to obtain access to state lands or water bottoms. The AESL agreement shall not provide access to any waterway.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:130 (January 2012).

§1125. Notification Requirements

A. The lessee shall notify the board in writing within five business days after the lessee files any action alleging insolvency or bankruptcy.

B. The lessee shall notify the board, through OMR, in writing within 30 days of any merger, name change, or change of address and contact information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:130 (January 2012).

Subpart B. Lease Administration

§1129. Overview of an Alternative Energy Source Lease Acquisition Process

A. Leases for the exploration, development and/or production of an alternative energy source on state lands or water bottoms under Chapter 14-A of Title 41 of the Louisiana Revised Statutes of 1950 shall be acquired from the board, through OMR, through a public bid process as set forth in this Chapter or as designated in a separate alternative energy source Subpart. The general steps in the AESL acquisition process are as follows:

1. registration;
2. pre-nomination requirements;
3. nomination of state lands or water bottoms for an AESL;
4. examination and evaluation of the nomination;
5. advertisement of state tract(s) offered for an AESL, including a request for bids and/or comments;
6. submission of bids on a state tract for an AESL;
7. examination and evaluation of bids for an AESL;
8. award of an AESL;
9. issuance and execution of an AESL.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:130 (January 2012).

§1130. Registration

A. All persons or business entities applying for an AESL shall register with the board, through OMR, prior to submitting an application and, thereafter, renew their registration annually by January 31.

B. Registration consists of submitting a completed official Prospective Leaseholder Registration Form (obtainable from the board, through OMR,) and appropriate documentation from the Louisiana Secretary of State's Office to the board, through OMR, as follows:

1. Individual/Sole Proprietorship—no additional documents required.
2. Corporation—Louisiana Secretary of State "Detailed Record" webpage indicating good standing status.

3. Limited Liability Company—Louisiana Secretary of State "Detailed Record" webpage indicating good standing status.

4. Partnership—Louisiana Secretary of State "Detailed Record" webpage indicating active status.

C. If a current alternative energy source lessee fails to renew its annual registration, the board may levy liquidated damages of \$100 per day until the unregistered lessee is properly registered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:130 (January 2012).

§1131. Pre-Nomination Requirements

A. Prior to any nomination of state lands or water bottoms for an AESL, the nominating party shall:

1. conduct research prior to nomination to determine and confirm that the state land or water bottoms are available for the AESL and are claimed by the state;

2. provide a copy of the compromise instrument(s), or judgment(s) that establish(es) the state ownership interest, if the state lands or water bottoms include a legal area;

3. certify that the user(s) of any active or non-released land use agreement granted by the state on nominated land or water bottoms has been notified of the proposed AESL;

4. provide an affidavit, in authentic form, attesting that:

a. there are no encumbrances, including, but not limited to, current state leases, areas nominated for lease, or pipeline rights-of-way on state lands or water bottoms.;

b. any and all users of state lands or water bottoms to be nominated for an AESL have been notified of the proposed AESL. The affidavit shall include:

i. the official name and/or number of the governing agreement;

ii. the official name of the state entity that granted the governing agreement.

5. it is the responsibility of the alternative energy source applicant to consult and coordinate with the Port Authority with jurisdiction over lands or navigable water bottoms located within, or immediately adjacent to, the proposed AESL tract. An AESL cannot be issued without the written approval of the Port Authority with jurisdiction within the AESL area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:130 (January 2012).

§1132. Nomination of State Lands and Water Bottoms for an Alternative Energy Source Lease

A. Interested, registered parties shall nominate state lands and water bottoms for an AESL by submitting a proposal (hereinafter referred to as a "nomination") by application to the board, through OMR, in the appropriate form required. Each nomination shall include the following:

1. an official letter of application;
2. any title documentation obtained by the nominating party pursuant to §1131.A;
3. a written property description of the nominated acreage including the following:

a. the gross acreage amount of state lands or water bottoms, inclusive of any DWF property that may be contained within the nomination area;

b. the net acreage amount of state lands or water bottoms, exclusive of any DWF property that may be contained within the nomination area;

c. the net acreage amount of any DWF property that may be contained within the nomination area;

d. provide the following property description for state lands and water bottoms:

i. use bearing, distance and X-Y coordinates based on the Louisiana Coordinate System of 1927, North or South Zone (as applicable), to accurately and clearly describe the nominated acreage. Determine whether the acreage to be nominated falls in the North Zone or the South Zone of the Louisiana Coordinate System of 1927 and provide this information in the nomination package. A single nomination may contain acreage that falls partially in the North Zone and partially in the South Zone. However, the nominated acreage shall be allocated to the zone wherein the majority of the acreage falls and use that zone's coordinates (see R.S. 50:1);

4. a plat of the nominated acreage using the most recent background imagery and using X-Y coordinates based on the Louisiana Coordinate System of 1927, North or South Zone (as applicable). Each plat shall include:

a. an outline of the nominated acreage with a designated point of beginning and corners using X-Y coordinates that exactly match the X-Y coordinates for the point of beginning and corners provided in the written property description, clearly labeled therein;

b. an outline of the state lands and/or water bottoms included within the nomination area, clearly labeled along with the amount of acreage contained therein;

c. an outline of any DWF property, school indemnity lands, tax adjudicated lands, vacant state lands, White Lake, or legal areas, included within the nomination area, clearly labeled along with the acreage amount contained in each;

d. an outline of each active or non-released land use agreement granted by the state, including, but not limited to, an AESL, state mineral lease, state operating agreement, state exclusive geophysical agreement, state non-exclusive seismic permit, state right-of-way, and/or state surface/subsurface agreement, as well as any nomination tract approved for advertisement or advertised as offered for a state mineral lease, state operating agreement, or state exclusive geophysical agreement abutting, adjacent to, intersecting, and partially/wholly enclosed in the nomination area, clearly labeled with its official number along with the acreage amount contained therein.

e. all water bodies, clearly labeled;

f. all section, township and range information;

g. An outline of all Port Authority property in the nomination area with jurisdictional boundaries clearly delineated.

5. A summary of all environmental issues, including the potential environmental impacts resulting from the construction, operation, and placement of the alternative energy source and other facilities and equipment necessary for the exploration, development and production of an alternative energy source, and the steps proposed to

minimize and mitigate the environmental impact, along with any supporting environmental impact documentation.

6. A list of governmental entities, including each federal, state, parish or local governmental entity, having jurisdiction in the nomination area, and for each, the contact person's name, title, office address, telephone and fax numbers, and email address, as well as the type of legal authority, if any, acquired or to be acquired from the governmental entity. Included in this list shall be all port authority districts in the nomination area with complete contact information.

7. A copy of the preliminary permit, license, exemption, or other authorization issued by FERC pursuant to its authority under the Federal Power Act, 16 U.S.C. 791a, et seq., if required.

8. A summary of the overall specified AESP, including status of site control (progress with leasing and/or permitting other properties within the entire AESP boundaries) and application process with the transmission provider, as well as a time frame for the project to become operational.

9. A summary of the alternative energy source development proposed on the state lands or water bottoms sought to be leased, including a plat, the layout of the specified alternative energy source power and transmission facilities, proposed alternative energy source equipment information (size, location, number, type and depth of installation, turbine make, and nameplate power production capacity), placement information of equipment, whether the alternative energy source will be affixed to existing platforms or state owned structures or, if there will be a necessity to construct new platforms, selection criteria used, and supporting infrastructure.

10. The status and timeline of the major milestones in the AESP development, production, and decommissioning.

11. The measures proposed to reduce risk to the state, including, but not limited to, a summary of compliance with any and all standards established by state, national and international agencies, institutes, commissions or associations and any other entity responsible for establishing the alternative energy source industry standards. Standards for the alternative energy source development/operations include, but are not limited to, turbine safety and design, power performance, noise/acoustic measurement, mechanical load measurements, blade structural testing, power quality, and siting.

12. A summary of how the use of the state lands or water bottoms for the development and production of the alternative energy source will be coordinated with other users of the state lands or water bottoms, including the operation of ports, harbors, or terminal districts, shipping and recreational interests, dredging operations, and navigation safety.

13. A summary of contingency plans and emergency shut-down procedures to be followed, including the circumstances to initiate such procedures, in the event of danger or damage to life, water craft or facilities as a result of collision, dredging, anchorage, search and rescue operations, or unforeseen events.

14. A summary of the procedure for installation, recovery and repair of damaged turbines and equipment with

minimal impact to navigation, shipping and recreational interests.

15. A summary of all study results, including copies of the complete final study reports, and all study data acquired by the applicant in a format agreeable to OMR, for all studies conducted by the applicant, for the area described in the lease application.

16. Any other information and documentation required by the board through OMR.

B. Each of the above items shall be submitted in original paper form. Additionally, a CD-ROM or DVD (hereinafter referred to as the "Nomination Disk") clearly labeled "AESL Nomination Disk" shall be submitted. Each Nomination Disk shall be affixed with the applicant and project names thereon and shall contain an electronic version of Item 3.d. above as a Word .doc file and Item 4. above as a .pdf file. Each Nomination Disk shall also contain a .dxf file which shall contain only the boundary of the nominated acreage, consisting of a single line, no additional lines, labels, text, or graphics, and shall be constructed of individual line segments between vertices. The X-Y coordinates in the .dxf file must exactly match those in the written property description and the plat.

C. The nominating party of an AESL shall observe the following restrictions:

1. Only bearing, distance and X-Y coordinates based on the Louisiana Coordinate System of 1927, North or South Zone (as applicable), shall be used and coordinates shall accurately and clearly describe the nominated acreage. If a single nomination contains acreage that is split between the North and South Zones, the nominated acreage shall be allocated to the zone containing the majority of the acreage pursuant to R.S. 50:1.

2. No more than 2,500 acres of state lands or water bottoms may be nominated in a single nomination.

D. Any other additional information required pursuant to §1121 of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:130 (January 2012).

§1133. Examination and Evaluation of Nomination for an Alternative Energy Source Lease

A. Upon verification by the board, through OMR, that the AESL nomination complies with legal, procedural and technical requirements, as well as with any current policies and practices:

1. The board, through OMR, shall evaluate the AESL nomination. If the nomination is acceptable, OMR shall:

a. place the AESL nomination tract on the board Nomination and Tract Evaluation Committee Agenda for the next regular scheduled board meeting;

b. recommend to the board, pursuant to §1134, that a public bid process be conducted to advertise the nomination.

2. The board, through OMR, shall remove the acreage from commerce for the purpose of an AESL until the final outcome of the nomination is determined.

3. The board, through OMR, shall make available, after board approval, via the OMR website at www.dnr.louisiana.gov, the nomination application as outlined in §1132.

4. The Office of State Lands (OSL), Department of Wildlife and Fisheries (DWF), and DOTD shall:

a. review the proposed location of the AESL;

b. certify to the board if there are other leases of any kind at the proposed lease location;

c. if there is an existing lease, the respective agency(ies) shall provide copies to the board of the lease(s).

5. The board, through OMR, shall transmit the nomination package and all other lease certifications to the secretary of DNR for evaluation.

B. An applicant may withdraw a nomination during the examination and evaluation process if notification is transmitted prior to the tract being officially advertised for an AESL by submitting a written request to OMR, Attention: Leasing Section, P.O. Box 2827, Baton Rouge, LA 70821-2827.

C. An applicant may not withdraw after the tract has been advertised without approval of the board. To obtain approval, the applicant shall submit a letter requesting withdrawal of the nomination to the board. If the board approves the request, the nomination fee payment shall not be refunded.

D. The decision of the Port Authority, when required in accordance with §1112 shall be submitted in written form. The Port Authority shall have 60 calendar days from the date the board approves the nomination to submit to the board, through OMR, a written decision to either grant or deny the AESL application. Failure of the Port Authority to submit a decision to the board, through OMR, within a specified time limit shall be considered a denial of the AESL application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:132 (January 2012).

§1134. Advertisement of a State Tract Offered for an Alternative Energy Source Lease and Request for Bids

A. The board, through OMR, shall publish an advertisement of the state tract offered for an AESL and request for bids in the official journal of the state and official journal(s) of the parish(es) where the land(s) is/are located, and, at its discretion, no less than 60 and no more than 120 days prior to the date for the public opening of bids. The advertisement shall contain the following, which shall constitute judicial advertisement and legal notice pursuant to Chapter 5 of Title 43 of the Louisiana Revised Statutes of 1950:

1. a legal description of the nominated acreage;

2. the official tract number of the nominated acreage;

3. the gross and net amount of state lands or water bottoms nominated;

4. the date, time and place where the sealed bids will be received and publicly opened. Once a bid is submitted, it may not be withdrawn or cancelled. The board does not obligate itself to accept any bid. Bid acceptance or rejection is at the sole discretion of the board which reserves the right to reject any and all bids or to grant an AESL on any portion of state lands or water bottom tracts advertised and to withdraw the remainder of the tract.

B. All state AESLs shall be executed upon the terms and conditions provided in the current official state AESL form with any attached rider(s).

C. Notwithstanding any provisions to the contrary in any state AESL awarded or in any rider attached thereto, the lease awarded shall be granted and accepted without any warranty of title and without any recourse against the Lessor whatsoever, either expressed or implied. Further, Lessor shall not be required to return any payments received under the state AESL awarded or be otherwise responsible to the state alternative energy source lessee therefore.

D. Some tracts available for AESL may be situated in the Louisiana Coastal Zone as defined in R.S. 49:214 et seq., and may be subject to guidelines and regulations promulgated by DNR, Office of Coastal Management, for operations in the Louisiana Coastal Zone.

E. Prior to commencing construction, each state alternative energy source lessee and state AESL operator shall have a general liability insurance policy in a form acceptable to the board as set forth in Subpart D of this Chapter.

F. Prior to commencing construction, each state alternative energy source lessee and state AESL operator shall provide financial security in a form acceptable to the board as set forth in Subpart D of this Chapter.

G. Lessor excepts and reserves the full use of the leased premises and all rights with respect to surface and subsurface for any and all purposes except for those granted to the state alternative energy source lessee, including the use of the leased premises for the exploration, production and development of oil, gas and other minerals by the lessor, its mineral lessees, grantees or permittees. Co-users of the leased premises shall agree to coordinate plans and cooperate on activities to minimize interference with other operations to the extent possible.

H. To protest the board leasing of a state tract for an AESL, the protesting party shall submit a formal letter of protest to the board at least seven days prior to the scheduled board meeting to consider the AESL on the tract (generally, the lease sale date). The letter of protest shall reference the appropriate tract number, parish, and board lease sale date, as well as set forth the source and nature of the title claimed, how and when acquired, and by what legal process.

I. A party may request proof that a tract was advertised in the official state and parish journals using the official Request for Proof of Publication Form published by OMR. Proof of publication consists of certified copies of the affidavits from the official state and parish journals attesting to publication. There is a fee of \$40 for providing proof of publication for a tract.

J. Within 20 days of the advertisement of the state tract, any person or entity may submit written comments to the board, through OMR, at the following address: Department of Natural Resources, Office of Mineral Resources, Attn: Leasing Section, P.O. Box 2827, Baton Rouge, LA 70821-2827.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:132 (January 2012).

§1135. Submission of Bids on Tracts Offered for an Alternative Energy Source Lease

A. Interested registered parties shall submit sealed bids on the entirety of the state tract nominated and advertised as offered for an AESL to the board, through OMR, in the form

it requires by the bid submission deadline (no later than 12 p.m. Central Time on the Tuesday immediately prior to the Wednesday board lease sale at which the tracts are offered, unless otherwise noticed). Each bid shall be accompanied by any other documentation and/or information required.

B. Only those bidders who are registered prospective leaseholders with OMR as set forth under §1130 of this Chapter shall be allowed to bid on tracts for the purpose of obtaining an AESL from the state.

C. A party interested in bidding on a state tract for an AESL shall prepare a bid package that includes the items listed below. The bidder shall place all of the items required to be included in the bid package in an envelope, completely seal the envelope, write the official tract number on the outside of the envelope, and notate the following on the outside of the envelope: "Sealed Bid for State AESL is Enclosed". This envelope should include:

1. an official bid form available from OMR. Provide one original signed paper copy only;

2. a summary of experience including, at a minimum, the number of years of the bidding party's experience in the development and production of the specified alternative energy source and project descriptions. Experience with the specific AESP involving government lands and water bottoms shall be specified;

3. the proposed bid package shall set forth the following:

a. a summary of the overall business plan of the proposed alternative energy source development, including size of operation, development costs, marketing of the project, market prices, and status of a power purchase agreement;

b. a summary of the overall specified AESP, including status of site control (progress with leasing and/or permitting other properties within the entire AESP boundaries) and application process with the transmission provider, as well as a time frame for the project to become operational;

c. a summary of the alternative energy source development proposed on the state lands or water bottoms sought to be leased, including a plat, the layout of the specified alternative energy source power and transmission facilities, proposed alternative energy source equipment information (size, location, number, type and depth of installation, turbine make, and nameplate power production capacity), placement information of equipment, and whether the alternative energy source will be affixed to existing platforms or state owned structures or will there be a necessity to construct new platforms, selection criteria used, and supporting infrastructure;

d. the status and timeline of the major milestones in the AESP development, production, and decommissioning;

e. the name of the company that will operate the AESP and its relationship, if any, to the applicant;

f. a summary of the expected revenue and cash flow for the AESP on state lands or water bottoms, including a detailed list of assumptions;

g. the measures proposed to reduce risk to the state, including, but not limited to, a summary of compliance with any and all standards established by state, national and international agencies, institutes, commissions or associations and any other entity responsible for establishing

the alternative energy source industry standards. Standards for the alternative energy source development/operations include, but are not limited to, turbine safety and design, power performance, noise/acoustic measurement, mechanical load measurements, blade structural testing, power quality, and siting;

h. a summary of how the AESP will ensure the viability of the state's natural resources, including, but not limited to, fish, wildlife and botanical resources, provide a continuing energy source for the citizens and businesses of Louisiana, promote economic development through job retention and creation in the state, and promote a clean and lasting environment;

i. a summary of how the use of state lands or water bottoms for the development and production of the alternative energy source will be coordinated with other users of state lands or water bottoms, including the operation of ports, harbors, or terminal districts, shipping and recreational interests, dredging operations, and navigation safety;

j. a summary of contingency plans and emergency shut down procedures to be followed, including the circumstances to initiate such procedures, in the event of danger or damage to life, water craft or facilities as a result of collision, dredging, anchorage, search and rescue operations, or unforeseen events;

k. a summary of the procedure for installation, recovery and repair of damaged turbines and equipment with minimal impact to navigation, shipping and recreational interests;

l. any other additional information required pursuant to §1121 of this Chapter;

4. a comprehensive summary of all environmental issues including, but not limited to, the environmental impact resulting from the construction, placement, operation and removal of the alternative energy source's facilities and equipment necessary for the development and production of the alternative energy source, and the steps proposed to minimize the environmental impact, along with any supporting environmental impact documentation.;

5. a list of project participants who are or will be participating in the planning, development, construction, operation, maintenance, remediation, and/or decommission phases of the proposed project, and a brief description of each participant's role;

6. a summary of project financing which shall include, at a minimum, identification of the sources of financing and a discussion of financing;

7. a list of governmental entities, including each federal, state, parish and local governmental entity having jurisdiction in the nomination area, including the name of the contact person, his/her title, office address, telephone and fax numbers, and email address, as well as the type of legal authority, if any, acquired or to be acquired from the governmental entity;

8. a summary of all study results, including copies of the complete final study reports and all study data acquired by the applicant, in a format agreeable to OMR, for all studies conducted by the applicant, for the area described in the lease application;

9. a summary detailing the project's impact and mitigation required to protect the historical and archaeological resources of the area.

D. The applicant shall deliver the sealed bid package to the board, through OMR, by either hand-delivery or traceable delivery service. The sealed bid package must be physically in the possession of appropriate OMR personnel by the bid submission deadline (generally no later than 12 p.m. Central Time on the Tuesday immediately prior to the Wednesday board lease sale at which the tracts are offered unless otherwise noticed).

E. Once a bid is submitted, it may not be withdrawn or cancelled. The board is not obligated to accept a bid. Bid acceptance or rejection is at the sole discretion of the board who reserves the right to reject any and all bids or to grant an AESL on any portion of the state tract advertised and to withdraw the remainder of the tract.

F. When two or more parties submit a joint bid, the parties shall designate the undivided percent interest of each party on the official bid form. The interests, so designated, shall be stipulated in any lease that may be awarded. Failure to designate the undivided percent interest of each joint bidder shall result in the board assigning equal interests to each bidder.

G. When two or more parties submit a joint bid, the parties shall designate on the official bid form, as well as on a separate form, the name of the principal AESL lessee, who shall be authorized to act on behalf of all co-lessees, including, but not limited to, the authority to release. The principal AESL lessee shall be stipulated in any lease that may be awarded.

H. A bid for an AESL shall exclude all rights not specifically granted in any AESL subsequently awarded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:1333 (January 2012).

§1136. Protest of an Alternative Energy Source Lease

A. If a party wants to protest the issuance of an AESL for a state tract, the party shall submit a formal letter of protest to the board at least seven days prior to the board's scheduled meeting to consider the AESL on the tract (generally, the lease sale date). The letter of protest shall reference the appropriate tract number, parish, and board lease sale date, as well as set forth the source and nature of the title claimed, how and when acquired, and by what legal process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:134 (January 2012)

§1137. Examination and Evaluation of Bids for an Alternative Energy Source Lease

A. Sealed bids for a state AESL shall be publicly opened and read aloud on the date advertised for the public opening of bids (generally, the lease sale date at which the tract is offered) in the LaBelle Room, also known as the Conservation and Mineral Resources Hearing Room, located on the first floor of the LaSalle Building at 617 North Third

Street, Baton Rouge, LA. The board shall defer action on the bids for the AESL until completion of the pending examination and evaluation of the bids by its staff, but no more than 120 calendar days after the opening of the bid. The board staff shall examine and evaluate the bids to confirm compliance with legal, procedural and technical requirements, as well as with any current policies and practices, based on available data and analyses.

B. If examination of the successful bid acreage amount reveals that there is more or less state acreage than the amount bid on, without exceeding the boundaries advertised, the dollar amount (bonus) shall be adjusted accordingly.

C. The board has the authority to accept or reject any bid.

D. The cash bonus and the administrative fee paid shall be negotiated and transmitted for processing in accordance with law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:134 (January 2012).

§1138. Award of an Alternative Energy Source Lease

A. At the next regular board meeting following conclusion of the staff's examination and evaluation of the bids for an AESL, after the staff has technically briefed the board in executive session as to the merit of the bids and the approval of the COP, the board shall reconvene in open session at the lease sale. The OMR designee shall publicly announce the staff's recommendations to the board as to which bids should be accepted and which bids should be rejected, and providing the reasons for rejection. The board shall announce its AESL award decision at the lease sale.

B. Information, including bids, all required authorizations and approvals, and award of any AESL shall be published in the DNR Strategic Online Natural Resources Information System ("SONRIS").

C. The cash bonus and administrative fee, as required pursuant to §1104, shall be due within 24 hours of the award of the AESL. Payments shall be made payable to the "Office of Mineral Resources" via certified funds, bank money order, cashier's check, bank wire, or Automated Clearing House (ACH) transfer. Failure to submit payments within 24 hours of the award of the AESL shall be deemed forfeiture by the applicant of the AESL.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:135 (January 2012).

§1139. Issuance and Execution of an Alternative Energy Source Lease

A. OMR shall assign an AESL number to each lease awarded by the board, prepare the AESL as awarded, and mail no less than three original copies, properly executed by the board, to the alternative energy source lessee, via certified USPS mail, return receipt requested.

B. Upon receipt of the lease package via certified mail, the alternative energy source lessee will have 20 days from the date on the certified mail receipt or, if no date is affixed thereon, from the date the board, through OMR, receives the certified mail receipt, to return to the board, through OMR, one fully executed original lease contract and the recordation

information from each parish wherein it is recorded. Failure to return one fully executed original lease contract and the recordation information from each parish wherein the lease is recorded to the board, through OMR, within 20 days may result in forfeiture of the AESL, including the dollar amount (bonus) and 10 percent administrative fee. Failure to follow the notarization requirements of R.S. 35:12 shall cause the lease to be rejected.

C. Any party may request proof that a particular AESL granted by the board was timely executed by using the official form available from OMR. Proof of timely execution of lease consists of a certificate issued by the board, through OMR, certifying that the lease was received by the board, through OMR, duly executed by the lessee, within the allotted 20 day period. There is a fee of \$5 for providing proof of timely execution of a lease.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:135 (January 2012).

§1140. Alternative Energy Source Lease Operations

A. An AESL on state lands or water bottoms shall have a maximum initial term of five years and continue thereafter, as long as the alternative energy source operations are being conducted without interruption and electric power is being generated and used in significant quantities for the commercial transmission of electric energy and applicable fees are paid to the board, through OMR, in a timely manner.

B. All AESLs shall be executed upon the terms and conditions provided in the current official AESL with any attached rider(s).

C. Notwithstanding any provisions to the contrary in any AESL awarded or in any rider attached thereto, the lease awarded shall be granted and accepted without any warranty of title and without any recourse against the Lessor whatsoever, either expressed or implied. Further, Lessor shall not be required to return any payments received under the AESL awarded or be otherwise responsible to the lessee.

D. Lessor accepts and reserves the full use of the leased premises and all rights with respect to its surface and subsurface for any and all purposes except for those granted to the lessee, including the use of the leased premises for the exploration, production and development of oil, gas and other minerals by the Lessor, its mineral lessees, grantees or permittees. Co-users of the leased premises shall agree to coordinate plans and cooperate on activities to minimize interference with other operations to the extent possible.

E. Prior to commencing construction, each lessee and AESL operator shall obtain a general liability insurance policy in a form acceptable to the board as set forth in §1154 of this Chapter.

F. Prior to commencing construction, each lessee and AESL operator shall provide financial security in a form acceptable to the board as set forth in §1153 of this Chapter.

G. Lessee hereby agrees that in exercising the rights granted under the AESL, it will comply with and be subject to all current applicable laws and regulations, including, but not limited to, environmental laws, ports and waterways laws, energy laws, and those validly adopted or issued, by the U.S. and its agencies, by the state of Louisiana and its agencies, and by any applicable local or parish government. Lessee further agrees that it will comply with all minimum

water quality standards validly adopted by governmental authorities with respect to pollution, noxious chemicals, and waste being introduced into affected water areas.

H. Any contract entered into for the lease of state lands for any purpose shall require that access by the public to public waterways through the state lands covered by the lease shall be maintained and preserved for the public by the lessee. This provision shall not prohibit the secretary of the state agency having control over the property from restricting access to public waterways if the secretary determines that a danger to the public welfare exists. This provision shall not apply in cases involving title disputes.

I. The alternative energy source lessee operator shall schedule a pre-operations meeting with and submit an operations package to the board, through OMR, at least 30 days prior to commencement of construction. The operation package shall contain the following additional items:

1. notice of beginning of AESL operations;
2. proof of financial assurance as set forth in Subpart D of this Chapter;
3. an updated list of project participants;
4. any other information or documentation required by the board, through OMR.

J. At the expiration of the primary term, production of alternative energy source electric power shall be required to maintain the lease in force. If the lessee is producing alternative energy source generated electric power, the lease shall continue in force as long as production of generated electric power continues without lapse of more than 180 days, unless the suspension is due to a suspension order. Any lapse in production of generated electric power greater than 180 days may, at the board's discretion, result in the termination of the lease.

K. Lessee shall survey the exact locations of any physical improvements that it has made upon the property including, but not limited to, turbines and mounting structures, controller boxes, foundations, roads, overhead and underground electrical wires, communication lines, poles and cross members, and substations and transmission facilities, and shall further show the areas of land containing the improvements on the survey.

L. Any and all alternative energy source data collected during the term of the lease by the alternative energy source lessee shall be provided to the board, through OMR, every six months. All information maps, plots, and other data provided to the board, through OMR, shall be deemed public record except where the record is designated as confidential by law. Any record determined to be confidential shall not be released to any agency or entity absent a valid court order from a court of competent jurisdiction.

M. Periodic reporting may be required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:135 (January 2012).

§1141. Transfer of Interest in or Assignment of an Alternative Energy Source Lease

A. Prior to execution and recordation of a transfer of interest in or assignment of an AESL, a prospective transferee or assignee of an AESL shall schedule a pre-transfer meeting with and submit a transfer package to the board, through OMR, no later than the board's regular

meeting for the month prior to the board's regular meeting at which the item is to appear on the board's docket for approval.

B. No transfer or assignment in relation to any AESL shall be valid unless approved by the board prior to the transfer or assignment. Failure to obtain board approval of any transfer or assignment of an AESL prior to transfer or assignment shall subject the transferor or assignor and the transferee or assignee, jointly, severally and in solido, to liquidated damages of \$100 per day, beginning on the first day following the execution of the transfer or assignment.

C. Transfers or assignments shall not be granted to prospective leaseholders that are not currently registered with OMR as set forth under §1130 of this Chapter.

D. The transfer package shall contain the following items:

1. an official letter from FERC approving the transfer of the federal energy license, if required;
2. two original, unexecuted, unrecorded transfer or assignment instruments designating the operator and the principal alternative energy source lessee authorized to act on behalf of all co-lessees with proof of designation attached.;
3. a Designation of Principal State Alternative Energy Source Lessee and Operator Form completed by each prospective leaseholder;
4. a separate Statement of Conveyance of Alternative Energy Source Lease Form completed for each AESL impacted by the transfer. Each form shall reflect only the gross working interest in the lease existing before and after the conveyance (no net revenue interests shall be considered or reported);
5. a proposed plan of operations that includes all items set forth in §1135.C.3.a.-l. of this Chapter;
6. any environmental impact documentation supplementing and updating §1132.A.5 of this Chapter;
7. a list of project participants who are or will be participating in the planning, development, construction, operation, maintenance, remediation, and/or decommission phases of the proposed AESL, and a brief description of each project participant's role;
8. a summary of project financing which shall include, at a minimum, identification of the sources of financing and a discussion of the financing;
9. a list of governmental entities, including each federal, state, parish and local governmental entity that has jurisdiction in the leased area and for each, the contact person's name, title, office address, telephone and fax numbers, and email address, as well as the type of legal authority, if any, acquired or to be acquired from the governmental entity;
10. if AESL operations have commenced, proof of general liability insurance held by the transferee/assignee in a form acceptable to the board as set forth in §1154 of this Chapter and proof of financial assurance from the transferee/assignee in a form acceptable to the board as set forth in §1153 of this Chapter;
11. a docket fee in the amount of \$100 made payable to the "Office of Mineral Resources" to cover the cost of preparing and docketing transfers or assignments of an AESL. A personal or business check shall be acceptable;
12. any other information and documentation required.

E. An assignment or other transfer made by lessee which has been approved by the board does not relieve the original lessee, or any of its successors or assigns, of any and all obligations, duties, or responsibilities incurred under the terms of the AESL.

F. No assignment or transfer of an AESL shall be valid unless a provision has been made by the assignor or transferor and assignee or transferee to have the financial security and insurance set forth in this Chapter maintained in full force and effect following the assignment or other transfer into the authority of the assignee. Written evidence of the maintenance of the required financial security and insurance shall be presented together with the assignment or other transfer at the same time as submitted for the board's approval. The same shall hold true for each and every successive assignment or transfer of an interest in the AESL.

G. Upon board approval of the transfer or assignment, the transferor/assignor or transferee/assignee shall record the approved transfer instrument and the approval resolution in the appropriate parish(es) per the approval resolution and shall furnish the board, through OMR, with an original certified copy of the recorded instrument from the respective clerk of court office(s).

H. Upon board approval, the transfer or assignment instrument shall be executed, in authentic form, by both transferor and transferee/assignor and assignee [and spouse(s), if appropriate]. As an alternative, the transferee/assignee [and spouse(s), if appropriate] may execute an acceptance by assignee form, executed in authentic form, with a copy attached to each of the transfer instruments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:136 (January 2012).

§1142. Partial or Full Release of an Alternative Energy Source Lease

A. Upon expiration or termination of an AESL, in whole or in part, for any reason, the principle alternative energy source lessee shall execute and record an appropriate instrument of release within 90 days of expiration or termination in each parish wherein the leased premises are located and shall provide the board, through OMR, with a copy of the recorded instrument of release from each parish wherein it is recorded properly certified by the recorder for that parish. In the event the principle alternative energy source lessee fails to comply, all other active joint-lessees shall be jointly and solidarily liable for liquidated damages in the amount of \$100 per day commencing on day 91 after expiration or termination. The lessee(s) shall also be responsible for reasonable attorney fees and costs incurred should litigation be required for AESL cancellation.

B. The release instrument shall contain the AESL number and shall be signed by the principle alternative energy source lessee, with the signature duly witnessed and notarized. Failure to follow the notarization requirements of R.S. 35:12 shall be grounds for rejection of the release instrument.

C. Should a lessee wish to release only a portion of the leased acreage, the lessee shall contain the whole of the retained acreage within a single contiguous block of acreage.

1. For a partial release only, the lessee shall also provide the following items:

a. a written property description, fully justified, using Microsoft Word. The first part shall describe and provide the amount of state owned acreage released. The second part shall describe and provide the amount of state owned acreage retained. X-Y coordinates shall be based on the Louisiana Coordinate System of 1927, North or South Zone (as applicable), shall be used, starting with an X-Y point of beginning and using distance and bearings to each X-Y corner or turning point. Calculations, closures and ties to existing AESLs that comply with generally accepted surveying standards shall be used;

b. a plat that clearly delineates the boundaries of and sets forth the state owned acreage amount released and the state owned acreage amount retained. An 8½" x 11" paper copy of the most recent edition of the 7½ minute USGS Quadrangle Map (scale 1" = 2000' or 1" = 3000'; or the block system of 1" = 4000', if applicable) shall be used. X-Y coordinates based on the Louisiana Coordinate System of 1927, North or South Zone (as applicable) shall be used, starting with an X-Y point of beginning and using distance and bearings to each X-Y corner or turning point. Calculations, closures and ties to existing AESLs that comply with generally accepted surveying standards shall be used;

2. Each of the above items shall be submitted in original paper form. Additionally, a CD-ROM or DVD ("AESL Release Disk") clearly labeled "AESL Release Disk" shall be submitted. Each AESL Release Disk shall be affixed with the lessee and project names thereon and shall contain an electronic version of Item C.1.a. above as a Word.doc file and Item C.1.b. above as a .pdf file. Each Nomination Disk shall also contain a .dxf file which shall contain only the boundary of the acreage portion to be released and that portion to be retained, each consisting of a single line, no additional lines, labels, text, or graphics, and shall be constructed of individual line segments between vertices. The X-Y coordinates in the .dxf file must exactly match those in the written property description and the plat.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:137 (January 2012).

Subpart C. Alternative Energy Source Lease Suspension or Cancellation

§1145. Partial or Full Suspension of an Alternative Energy Source Lease

A. The board, or an authorized representative of the board, may order a suspension after notice and opportunity for a hearing of the AESL under the following circumstances:

1. when necessary to comply with judicial decrees prohibiting some or all activities under the AESL;

2. when continued activities pose an imminent threat of serious or irreparable harm or damage to natural resources, life (including human and wildlife), property, the marine, coastal, riverine, or human environment, or sites, structures, or objects of historical or archaeological significance;

3. when the alternative energy source operations adversely impact, impede, obstruct, or interfere with the

navigability of any waterway, the use of the waterway by other users, or interfere with maritime commerce or the recreational use of the waterway;

4. lessee or its operator fails to comply with an applicable law, regulation, order, resolution, or provision of the AESL.

B. If the board, or its authorized representative, orders a suspension under Paragraph A.2. or A.3. of this Subpart, and the lessee wishes to resume activities, the board, or its authorized representative, may require the lessee to conduct a site-specific study to evaluate the cause of the harm, the potential damage, and/or the available mitigation measures.

1. The lessee shall be responsible for payment of the site-specific study.

2. The lessee shall furnish one paper copy and one electronic copy of the site-specific study and results to the Board or its authorized representative.

3. The board, or its authorized representative, will make the results available to other interested parties and to the public.

4. The board, or its authorized representative, will use the results of the site-specific study and any other information that becomes available:

a. to determine if the suspension order should be lifted;

b. to determine any actions that the lessee must take to mitigate or avoid any damage to natural resources, life (including human and wildlife), property, the marine, coastal, riverine, or human environment, or sites, structures, or objects of historical or archaeological significance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:137 (January 2012).

§1146. Suspension Order

A. The board, or its authorized representative, shall issue a suspension order in accordance with the following procedures:

1. The suspension order may be in oral form or in writing.

2. The board, or its authorized representative, will send the lessee a written suspension order as soon as practicable after issuing an oral suspension order.

3. The written order shall explain the reasons for issuance and describe the effect of the suspension order on the AESL and any associated activities. The board, or its authorized representative, may authorize certain activities or require the removal of certain equipment at the lessee's expense during the period of the suspension, as set forth in the suspension order.

4. The lessee shall have the right to have a hearing at the next scheduled board meeting to petition for the revocation of the suspension order.

B. A suspension order shall last for the period specified in the order. If the board determines that the circumstances responsible for initiation of the suspension order cannot be resolved within a reasonable time period, the board may initiate cancellation of the AESL.

C. A suspension order shall not extend the terms of the AESL for a time period equal to the period of time the lessee is prohibited from conducting activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:138 (January 2012).

§1147. Equipment Removal Order or Cancellation of an Alternative Energy Source Lease

A. The board shall cancel any AESL issued under this Part upon proof that the AESL was obtained by fraud or misrepresentation, and after notice and opportunity to be heard has been afforded to the lessee.

B. The board may cancel an AESL issued under this Part if the board determines, after notice and opportunity for a hearing, that the lessee has failed to comply with any applicable provision of these rules, any order of the board, or any term, condition or stipulation contained in the AESL, and that the failure to comply continued for 30 days (or other period the board specifies) after lessee received notice from the board or its authorized representative of non-compliance.

C. The board may cancel the AESL and/or require the lessee to suspend its operations and remove all equipment at lessee's cost from the state lands or water bottoms at any time if the state determines, after the lessee has been given notice and a reasonable opportunity to be heard, that:

1. continued operations under the AESL will cause serious harm or damage to biological resources, property, oil, gas or other mineral resource development activities, the environment (including, but not limited to, the human environment), impede, obstruct or adversely impact navigation or use of the waterway, have a detrimental affect on vessel safety, or if required for the dredging of the waterway;

2. the threat of harm or damage, the impediment or obstruction on navigation, or the detrimental effect on vessel safety exists within an unacceptable limit and cannot be eliminated or reduced to an acceptable limit within a reasonable period of time;

3. the economic advantages of cancellation outweigh the economic advantages of continuing either the AESL in effect or continued operations under the AESL.

D. Failure of the alternative energy source lessee to comply with an order of the board, or its authorized representative, to remove any and/or all equipment or suspend operations by the date specified, shall subject the lessee to a civil penalty of \$300 per day and shall continue to accrue on a daily basis until lessee complies with the order.

E. The civil penalty shall be paid into the Mineral and Energy Operation Fund on behalf of the board.

F. The state may remove any or all equipment whenever the lessee has failed to comply with the removal order of the board and the lessee shall reimburse the state for all necessary costs incurred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:138 (January 2012).

§1148. Effect of a Suspension Order on an Alternative Energy Source Lease

A. During the time the board, or its authorized representative, evaluates a lessee's request for removal of the suspension issued under §1146 of this Chapter, the lessee must continue to fulfill its payment obligation until the end

of the original term of the AESL. If the board or its authorized representative's evaluation goes beyond the end of the original term of the AESL, the term of the AESL shall be extended for the period of time necessary for the board, or its authorized representative, to complete its evaluation of the removal of suspension request. During this extended period of time, the lessee shall not be required to make payments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:138 (January 2012).

Subpart D. Financial Assurance Requirements

§1153. Financial Assurance Instrument

A. Before the board may issue an AESL or approve an assignment of an existing AESL, the lessee or proposed assignee must provide either:

1. a lease-specific bond in an amount set by the board, in an amount no less than \$500,000;

2. an approved financial assurance instrument in the amount required in Paragraph A.1 of this Subpart and as authorized by the board pursuant to §1155.

B. Each bond or other financial assurance must guarantee compliance with all terms and conditions of the AESL. The board may require the lessee to provide a new bond, or it may require the lessee to increase the amount of its existing bond to satisfy any additional financial assurance requirements. Lessee shall comply with this requirement by providing either:

1. a certificate of deposit issued exclusively to DNR in a form prescribed by the board from a financial institution acceptable to the board;

2. a performance bond issued exclusively to DNR in a form prescribed by the board from a financial institution acceptable to the board;

3. a line of credit available exclusively to DNR, with DNR bearing no liability, in a form prescribed by the board issued by a financial institution acceptable to the board.

C. The board may require supplemental financial assurance in an amount determined by the board for a specific AESP.

D. The lessee will be considered in compliance with the financial assurance requirements under this Subpart if the lessee's designated lease operator provides a lease-specific bond in the amount required in Paragraph A.1. of this Subpart or other approved financial assurance that guarantees compliance with all terms and conditions of the AESL.

E. The dollar amount of the minimum, lease-specific financial assurance in Paragraphs A.1. and B. of this Subpart will be adjusted to reflect changes in the Consumer Price Index-All Urban Consumers ("CPI-U") or an industry-equivalent index if the CPI-U is discontinued.

F. No CPI-U adjustment may be made within the five year period following the adoption of this rule. Subsequent CPI-U based adjustments may be made every five years thereafter.

G. The lessee may not terminate the period of liability of the financial assurance instrument or cancel the financial assurance instrument. The financial assurance must continue in full force and effect even though an event has occurred

that could diminish or terminate a surety's obligation under state law.

H. Evidence of financial assurance is required to be submitted by January 31 of each calendar year. Failure to submit updated evidence of financial assurance may cause the board, through OMR, to levy liquidated damages of \$100 per day until such evidence is received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:139 (January 2012)

§1154. Insurance Requirement

A. The lessee shall purchase and maintain, for the duration of the AESL, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the lessee.

B. The lessee shall obtain at its own cost and expense the following insurance placed with insurance companies authorized to do business in the state with A.M. Best ratings of A-VI or higher. This rating requirement may be waived for workers compensation coverage only.

1. Workers Compensation. Workers Compensation Insurance shall be in compliance with the Workers Compensation Law of the state of the contractor's headquarters. Employers Liability is included with a minimum limit of \$500,000 per accident/per disease/per employee. If work is to be performed over water and involves maritime exposure, applicable LHWCA, Jones Act, or other maritime law coverage shall be included and the Employers Liability limit increased to a minimum of \$1,000,000. A.M. Best's insurance company rating requirement may be waived for workers compensation coverage only.

2. Commercial General Liability. Commercial General Liability Insurance, including Personal and Advertising Injury Liability, shall have a minimum limit per occurrence of \$1,000,000 and a minimum general aggregate of \$2,000,000. The Insurance Services Office (ISO) Commercial General Liability Occurrence Coverage Form CG 00 01 (current form approved for use), or equivalent, is to be used in the policy. A claims-made form is unacceptable.

C. The General Liability Coverage policies shall contain, or be endorsed to contain, the following provisions.

1. The state, and its political subdivisions shall be named as an additional insured as regards negligence by the contractor and/or the lessee. ISO Form CG 20 10 (current form approved for use), or equivalent, is to be used when applicable. The coverage shall contain no special limitations on the scope of protection afforded to the state, OMR, and the board.

2. The lessee's insurance shall be primary as respects the state, and its political subdivisions. Any insurance or self-insurance maintained by the state, OMR, and the board, shall be excess and non-contributory of the lessee's insurance.

3. Any failure of the lessee to comply with reporting provisions of the policy shall not affect coverage provided to the state, and its political subdivisions.

4. The lessee's insurance shall apply separately to each insured against whom claim is made or suit is initiated, except with respect to the policy limits.

D. The Workers Compensation and Employers Liability Coverage Policies shall contain, or be endorsed to contain, the following provisions.

1. The insurer shall agree to waive all rights of subrogation against the state, and its political subdivisions losses arising from or in connection with the lessee's operation and use of the leased premises.

E. The lessee shall provide verification of insurance coverage in the following manner.

1. The lessee shall furnish OMR with certificates of insurance reflecting proof of required coverage. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be received and approved by OMR before work commences and upon any AESL renewal thereafter.

2. In addition to the certificates, the contractor and the lessee shall submit the declarations page and the cancellation provision endorsement for each insurance policy. OMR reserves the right to request complete certified copies of all required insurance policies at any time.

3. Upon failure of the lessee to furnish, deliver and maintain insurance as provided above, the AESL, at the election of the board may be suspended, discontinued or terminated. Failure of the lessee to purchase and/or maintain any required insurance shall not relieve the lessee from any liability or indemnification.

F. All certificates of insurance of the lessee shall reflect the following.

1. The lessee's insurer will have no right of recovery or subrogation against the state, and its political subdivisions. It is the intention of the parties that the lessee's insurance policies shall protect both parties and shall be the primary coverage for any and all losses that occur under the AESL.

2. The state, and its political subdivisions shall be named as an additional insured as regards negligence by the contractor, the lessee or the operator of the AESL. ISO Form CG 20 10 (current form approved for use), or equivalent, is to be used when applicable.

3. The insurance companies issuing the policy or policies shall have no recourse against the state and its political subdivisions for payment of any premiums or for assessments under any form of the policy or policies.

G. If at any time an insurer issuing any policy does not meet the minimum A.M. Best rating, the lessee shall obtain a policy with an insurer that meets the A.M. Best rating and shall submit another certificate of insurance as required. Upon failure of the lessee to furnish, deliver and maintain insurance as provided above, the AESL, at the election of the board or OMR, may be suspended, discontinued or terminated. Failure of the lessee to purchase and/or maintain any required insurance shall not relieve the lessee from any liability or indemnification under the AESL.

H. Any deductibles or self-insured retentions must be declared to and accepted by OMR. Any and all deductibles shall be assumed in their entirety by the lessee.

I. All property losses caused by the actions of the lessee shall be adjusted with and made payable to the state of Louisiana.

J. The lessee or the lessee's insurer shall submit updated proof of insurance as required by this Subpart to OMR by January 31 of each calendar year. If lessee or lessee's insurer fails to submit proof, OMR may levy liquidated damages in the amount of \$100 per day until proof is received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:139 (January 2012).

§1155. Financial Assurance Amount Determination

A. The board's determination of the amount of the financial assurance required shall be based on estimates of the lessee's cost to meet all accrued lease obligations, including, but not limited to, decommissioning.

B. The amount of the supplemental and decommissioning financial assurance requirements, if required by the board, shall be determined on a case-by-case basis. The amount of the financial assurance shall be no less than the amount required to meet all lease obligations, including:

1. the projected amount of rent and other payments due to the state for a 12 month period commencing the date the funds become necessary;
2. any past due rent and other payments;
3. any other monetary obligations;
4. the estimated cost of facility decommissioning, as required in Subpart E of this Chapter.

C. If the lessee's cumulative potential obligations or liabilities increase or decrease, the board may adjust the amount of financial assurance or supplemental financial assurance required. In no event shall the board decrease the dollar amount less than the minimums required in §1153 and §1154 of this Chapter. If the board proposes adjusting the amount of financial assurance required, OMR will notify the lessee of the proposed adjustment and provide the lessee an opportunity to comment.

D. Based on the information and statements provided by the lessee at the hearing, the board may modify the dollar amount required. The board may not modify the dollar amount required below the minimums required in §1153 and §1154 of this Subpart.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:140 (January 2012).

§1156. Bankruptcy or Lapse of Financial Assurance or Insurance

A. If the lessee becomes bankrupt or insolvent, or if the approved financial assurance expires for any reason, the lessee shall:

1. notify the board or its authorized representative within five business days of the expiration of existing financial assurance and/or insurance. Lessee's failure to renew or obtain new financial assurance and/or insurance prior to the expiration of existing financial assurance and/or insurance shall automatically suspend all rights granted to

the lessee under the AESL. lessee's failure to obtain coverage within 90 days after termination of the required security and/or insurance shall result in termination of the AESL;

2. notify the board or its authorized representative within five business days of the initiation of any judicial or administrative proceeding alleging insolvency or bankruptcy;

3. notify the board or its authorized representative within five business days after the lessee learns of any action filed alleging that the lessee's surety, or third-party guarantor, is insolvent or bankrupt.

B. If the approved financial assurance and/or insurance expire for any reason:

1. prior to the cancellation of the security or insurance required by this Subpart, if the lessee does not provide the Lessor evidence that a new security or insurance has been obtained meeting all of the requirements of this Subpart, all rights granted to the lessee under the AESL shall automatically and, without further notice to the lessee, be suspended;

2. the lessee shall immediately suspend operations under the AESL except for those operations necessary to maintain the safety of already ongoing operations. The lessee shall provide evidence to the board or its authorized representative by providing sufficient documentation demonstrating the reinstatement of the requisite security and/or insurance;

3. upon the reinstatement of the requisite security and/or insurance, the lessee will be allowed to resume operations;

4. should lessee fail to obtain coverage within 90 days after termination of the required security and/or insurance, the AESL shall terminate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:140 (January 2012).

§1157. Financial Assurance Company Rating

A. The financial assurance must be supplied by a company to whom A.M. Best Company has given not less than an "A" rating.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:141 (January 2012).

Subpart E. Decommissioning Requirements

§1161. Decommissioning Liability

A. Lessees, successors and/or assignees are jointly and solidarily responsible for meeting the decommissioning obligations for facilities on each AESL, including all obstructions, as the obligations accrue and until each obligation is met.

B. The decommissioning obligation will begin when a lessee, sub-lessee, assignee, or successor installs, or constructs equipment for the AESP, including, but not limited to, a facility, turbine, support structure, cable, or pipeline, or when the lessee, sub-lessee, assignee, or successor creates an obstruction to other uses of state lands or water bottoms.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:141 (January 2012).

§1162. Decommissioning General Requirements

A. Before decommissioning the facilities under an AESL, the lessee shall submit a decommissioning application and receive approval from the board or its authorized representative.

B. Following approval of the decommissioning application, the lessee shall submit a decommissioning notice at least 15 days prior to commencement of decommissioning activities. The decommissioning shall begin no later than 45 days following the approval of the decommissioning application.

C. Within one year following termination of an AESL, the lessee shall:

1. remove or decommission all facilities, turbines, support structures, cables, pipelines, and obstructions associated with the AESL;

2. clear the waterway and the water bottoms of all obstructions created by alternative energy source activities on the leased area. The board may require the lessee to immediately remove any and all obstructions effecting navigation and commerce of the waterway.

D. If the lessee, sub-lessee, assignee, successor, subcontractor, or any agent acting on behalf of lessee discovers any archaeological resource while conducting decommissioning activities, the party performing the decommissioning activities shall immediately cease bottom-disturbing activities within 1,000 feet of the discovery and report the discovery to the board, through OMR, within 72 hours of the discovery. Any party having knowledge of the discovery shall keep the location of the discovery confidential, except to report it to OMR, and shall not take any action that may adversely affect the archaeological resource unless instructed by OMR.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:141 (January 2012).

§1163. Decommissioning Application Time Requirements

A. The lessee shall submit a decommissioning application upon the earliest of the following dates:

1. two years prior to the expiration of the AESL;

2. ninety days after completion of the commercial activities on an AESL;

3. ninety days after cancellation, relinquishment, or other termination of the AESL.

B. Lessee shall justify any difference(s) existing between the decommissioning application and the approved COP submitted pursuant to §1135 of this Chapter.

C. The board may reject any proposed modification to the decommissioning plan as submitted and approved in the COP and require the lessee to comply with the most stringent plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:141 (January 2012).

§1164. Decommissioning Notice

A. The board, through OMR, shall advertise notice of the receipt of any decommissioning application pertaining to an AESL in the local newspaper where the AESL is located and in the official state journal. Such advertisement shall identify:

1. the title and address of OMR.;
2. the name, title, address, and telephone number of an OMR representative from whom additional information and/or documentation may be obtained;
3. the name and address of the entity submitting the decommissioning application;
4. the name and physical location of the affected facility;
5. the name of the affected waterway;
6. the activities involved in the decommissioning action;
7. the most recent approved decommissioning plan;
8. a brief description of the appropriate comment procedures;
9. the date, time and place of any scheduled hearing;
10. the procedure(s) for requesting a hearing.

B. The board, through OMR, shall provide at least 30 days for public comment.

C. The board, through OMR, shall provide notice of the proposed decommissioning application to each affected state agency and Port Authority within five business days of receipt of the decommissioning application. The comment period for affected state agencies and Port Authorities shall expire at the close of the public comment period.

D. The board may refuse to accept any recommendations for the decommissioning application submitted by a state agency and/or Port Authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:142 (January 2012).

§1165. Decommissioning Application Information Requirements

A. The lessee, sub-lessee, assignee, or successor shall include the following information in the decommissioning application:

1. Identification of the applicant, including:
 - a. names and addresses of the lease operator and lessee;
 - b. name and telephone number of lessee's contact person;
 - c. name, address, telephone number, and name of contact of the companies which issued the required financial assurance instruments and required insurance.
2. Identification and description of the facilities, turbines, support structures, cables, and/or pipelines lessee plans to remove or proposes to leave in place.
3. A proposed decommissioning schedule for the lease, including the expiration or relinquishment date and proposed month and year of removal.
4. A description of the removal methods and procedures, including the types of equipment, vessels, and moorings to be removed (e.g., anchors, chains, lines).

5. A description of the lessee's site clearance activities.

6. The lessee's plans for transportation and disposal or salvage of the removed facilities, turbines, support structures, cables, or pipelines and any required approvals.

7. A description of any resources, conditions, or activities that could be affected by or could affect the proposed decommissioning activities. The description shall confirm compliance with the National Environmental Protection Act ("NEPA") and other relevant federal, state and local laws.

8. The results of any recent biological surveys conducted in the vicinity of the leased area.

9. Mitigation measures secured to protect archaeological and sensitive biological features during removal activities.

10. A description of measures to prevent the unauthorized discharge of pollutants, including marine or riverine trash and debris, onto state lands or into waters.

11. A determination of lessee's intent to use divers to survey the leased area after removal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:142 (January 2012).

§1166. Process of Decommissioning Application

A. Upon lessee's compliance with §1165 of this Chapter, OMR or other state agencies may request a technical and environmental review based on a comparison of the decommissioning application and the decommissioning general concept in the approved COP.

B. The lessee may be required to revise the COP and begin the appropriate NEPA analysis and/or other regulatory reviews, as required, if OMR or other state agencies determine that the lessee's decommissioning application would:

1. result in a significant change in the impacts previously identified and evaluated in the COP;
2. require any additional federal or state permits;
3. propose activities not previously identified and evaluated in the COP.

C. During the review process, OMR or other state agencies may request additional information if it determines that the information provided is insufficient to complete the review process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:142 (January 2012).

§1167. Decommissioning Removal Requirements

A. The lessee must remove all equipment, including, but not limited to, facilities, turbines, support structures, pipeline, and cables, and shall comply with the decommissioning requirements as set forth by the U.S. Army Corps of Engineers. The lessee shall also comply with any additional or more stringent decommissioning requirements mandated by the board, through OMR.

B. Within 60 days after the removal of a facility, the lessee shall verify to the board, through OMR, that it has removed all equipment required to be removed and that it

has cleared the state lands and water bottoms of all obstructions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:142 (January 2012).

§1168. Decommissioning Report

A. Within 60 days after lessee has completed the decommissioning requirement and has restored the lease site by the removal of all alternative energy source equipment, including, but not limited to, facilities, turbines, support structures, cables, or pipelines, lessee shall submit a written report to the board, through OMR, that includes the following:

1. a summary of the removal activities, including the date removal activities were completed;
2. a description of any mitigation measures taken by lessee;
3. if lessee used explosives, a statement signed by lessee's authorized representative certifying that the types and amounts of explosives utilized were consistent with those in the approved decommissioning application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:143 (January 2012).

§1169. Failure to Comply with Decommissioning Requirements

A. The lessee shall comply with the decommissioning requirements as set forth in the approved decommissioning plan. If lessee fails to comply with the decommissioning requirements:

1. the board shall require the lessee to forfeit the financial assurance provided pursuant to §1153 and §1155 of this Chapter;
2. the lessee shall remain liable for the removal or disposal costs and shall be responsible for all accidents or damages, including reasonable attorney fees expended by the state to defend claims resulting from lessee's failure to comply with decommissioning requirements;
3. the board, or its authorized representative, may take legal action to enforce the decommissioning requirements. The lessee shall be liable for all reasonable attorney fees expended by the board or its authorized representative required to enforce the decommissioning obligations;
4. the lessee shall remain the owner of all facilities and/or equipment installed and used in the alternative energy project. The state shall have the right to remove any and all of the facilities and/or equipment at the expense of the lessee.

B. Failure of the alternative energy source lessee to comply with decommissioning obligations to remove all equipment by the date specified in the approved decommissioning plan shall subject the lessee to a civil penalty of \$300 per day and shall continue to accrue on a daily basis until the date the lessee has complied with the decommissioning obligation.

C. The civil penalty shall be paid into the Mineral and Energy Operation Fund on behalf of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:143 (January 2012).

Subpart F. Special Hydrokinetic Rules

§1175. FERC Authority

A. This Subpart shall apply only to hydrokinetic energy source projects which fall under the jurisdiction of the Federal Energy Regulatory Commission pursuant to the Federal Power Act, 16 U.S.C. 791a, et seq.

B. In the event there is a conflict with the requirements of this Subpart with any requirements under Chapter 11, the requirements set forth in this Subpart shall govern.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:143 (January 2012).

§1176. Hydrokinetic Lease Compliance

A. All applicants must first obtain approval by FERC for the issuance of a preliminary permit, license, exemption, or other authorization for the development of hydrokinetic energy. The lessee may use the documents submitted and approved by FERC to satisfy the following requirements.

1. The COP may satisfy the requirements of §1121 of this Chapter.
2. The Coast Guard recommendations may satisfy the requirements of §1122 of this Chapter and any information required concerning navigational safety and maritime security.
3. The report on fish, wildlife, and botanical resources may satisfy the information required of §1135.C.3.h of this Chapter to determine the project's impact and mitigation required to protect the fish, wildlife and botanical resources.
4. The report on historical and archaeological resources may satisfy the information required of §1135.C.9 of this Chapter to determine the project's impact and mitigation required to protect the historical and archaeological resources of the area.

5. The report on socio-economic impacts may satisfy the requirements of §1135.C.3.h. of this Chapter.

6. The report on environmental impact may satisfy the requirements of §1132.A.5. and §1135.C.4. of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:143 (January 2012).

§1177. Submission of Bid for Hydrokinetic Energy Source Lease

A. All interested registered parties who hold a valid preliminary permit, license, exemption, or other authorization issued by FERC pursuant to its authority under the Federal Power Act, 16 U.S.C. 791a, et seq., shall submit a bid package on the entirety of the State tract nominated and advertised for State hydrokinetic energy source lease to the board, through OMR, in the form OMR requires by the advertised deadline. Each bid package shall be accompanied by any other documentation and information required.

B. An official bid form is available from OMR. Applicant must provide one originally signed paper copy and no electronic copy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 38:143 (January 2012).

Part V. Office of Mineral Resources

Chapter 4. Dry Hole Credit Program

§401. Definitions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1608 (September 2006), repealed LR 38:144 (January 2012).

§403. Application for Status as a Dry Hole Credit Well

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1609 (September 2006), repealed LR 38:144 (January 2012).

§405. Assignment of a Dry Hole Credit

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1610 (September 2006), repealed LR 38:144 (January 2012).

§407. Application for Status as a Pre-Qualifying Well

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1610 (September 2006), repealed LR 38:144 (January 2012).

§409. Application for Status as a Royalty Relief Receiving Well

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1611 (September 2006), repealed LR 38:144 (January 2012).

§411. Extending the Dry Hole Credit Offset beyond Thirty-Six Months

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1613 (September 2006), repealed LR 38:144 (January 2012).

§413. Termination of Dry Hole Credit Offset

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1613 (September 2006), repealed LR 38:144 (January 2012).

Robert D. Harper
Undersecretary

1201#011

RULE

**Department of Revenue
Office of Alcohol and Tobacco Control**

Good Standing (LAC 55:VII.315 and 3109)

Under the authority of R.S. 26:76, 276 and 904, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Office of Alcohol and Tobacco Control, has amended LAC 55.VII.315 and 3109 to provide the requirements, qualifications, and conduct which constitutes “good standing” for the purposes of qualifying for a two-year permit.

This amendment to the above-referenced Rule is offered under the authority delegated and/or mandated by Act 259 of the 2011 Regular Session of the Louisiana Legislature and at the direction thereof in its amendment and re-enactment of R.S. 76, 276 and 904 to promulgate Rules to provide the requirements, qualifications, and conduct which constitutes “good standing” for the purposes of qualifying for a two-year permit.

Title 55

PUBLIC SAFETY

Part VII. Alcohol and Tobacco Control

Subpart 1. Beer and Liquor

Chapter 3. Liquor Credit Regulations

§315. Regulation VII—Procedures Determined for Issuing Permits

A. - A.3. ...

B. Except as otherwise provided for by law and these regulations, all alcoholic beverage permits shall be issued for a period of no more than one year.

C. Notwithstanding Subsection A of this Section, the commissioner may issue alcoholic beverage permits which are valid for two years to applicants in good standing with the office of alcohol and tobacco control. Obtaining a two year permit shall not be mandatory for qualified applicants. Qualified applicants electing not to obtain a two year permit shall make application under the provisions of Subsection B of this Section.

D. For purposes of this Section, *good standing* shall mean any original or renewal applicant for a retail, wholesale, or manufacturer/brewer alcoholic beverage permit who has not been issued a warning, pled or been found guilty of any violations of Title 26 and/or the regulations promulgated thereunder more than once during the two year period preceding the original or renewal application date.

E. Permit fees for the entire permit period shall be due upon submission of an original or renewal application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:71.1(1)(h) and 271.2(1)(h).

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcoholic Beverage Control, LR 28:346 (February 2002), amended LR 38:144 (January 2012).

Subpart 2. Tobacco
Chapter 31. Tobacco Permits
§3109. Initial Application and Related Fees

A. Retail Dealer Registration Certificate

1. Except as otherwise provided by law and these regulations, certificates shall be issued for a period of no more than one year. The initial \$25 annual fee for a retail dealer registration certificate shall be prorated over the appropriate number of months.

2. The annual renewal fee will be \$25 as established in Title 26 of the Revised Statutes. Certificate renewal fees for the entire certificate period shall be due upon submission of an original or renewal application.

3. Notwithstanding Paragraph A.1 of this Section, the commissioner may issue certificates which are valid for two years to applicants in good standing with the office of alcohol and tobacco control. Obtaining a two year certificate shall not be mandatory for qualified applicants. Qualified applicants electing not to obtain a two year certificate shall make application under the provisions of Paragraph A.1 of this Section.

4. For purposes of this Section, *good standing* shall mean any original or renewal applicant for a retail dealer registration certificate who has not been issued a warning, pled or been found guilty of any violations of Title 26 and/or the regulations promulgated thereunder more than once during the two year period preceding the original or renewal application date.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 76, 276 and 904 and Act 259 of the 2011 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:1321 (July 1998), amended LR 38:145 (January 2012).

Troy Hebert
Commissioner

1201#007

RULE

Department of Revenue
Office of Alcohol and Tobacco Control

Tobacconist Permits (LAC 55:VII.3101, 3103, and 3109)

Under the authority of R.S. 26:903, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Office of Alcohol and Tobacco Control, has amended LAC 55:VII.3101, 3103, and 3109 relative to application for and issuance of state tobacconist permits.

This amendment to the above-referenced Rule is offered under authority delegated and/or mandated by Act 412 of the 2010 Regular Session of the Louisiana Legislature and at the direction thereof in its amendment and re-enactment of R.S. 26:903(6) to promulgate rules relative to application for and issuance of state tobacconist permits and the fees related thereto.

Title 55
PUBLIC SAFETY
Part VII. Alcohol and Tobacco Control
Subpart 2. Tobacco

Chapter 31. Tobacco Permits

§3101. Definitions

A. For purposes of this Chapter, the following terms are defined.

* * *

Retail Dealer—every dealer, other than a wholesale dealer, tobacconist, or manufacturer, who sells or offers for sale cigars, cigarettes, or other tobacco products, irrespective of quantity or number of sales.

Tobacconist—any bona fide tobacco retailer engaged in receiving bulk smoking tobacco for the purpose of blending such tobacco for retail sale at a particular outlet where 50 percent or more of the total purchases for the preceding 12 months were purchases of tobacco products, excluding cigarettes.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:901.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:1320 (July 1998), amended LR 38:145 (January 2012).

§3103. Identifying Information for Certificates and Permits

A. Certificates and Permits

1. A retail dealer registration certificate shall be issued to any dealer, not otherwise required by Title 26 to obtain a permit, other than a wholesale dealer, tobacconist, or vending machine operator.

2. A retail dealer permit shall be issued to a dealer other than a wholesale dealer, tobacconist, or vending machine operator for each retail outlet where cigars, cigarettes, or other tobacco products are offered for sale either over the counter or by vending machine.

3. A tobacconist permit shall be issued to a dealer engaged in receiving bulk smoking tobacco for the purpose of blending such tobacco for retail sale at a particular outlet where 50 percent or more of the total purchases for the preceding 12 months were purchases of tobacco products, excluding cigarettes, for each retail outlet where cigars, cigarettes, or other tobacco products are offered for sale either over the counter or by vending machine.

4. A vending machine operator permit shall be issued to a vending machine operator operating one or more vending machines. Licensed wholesale dealers who operate vending machines shall not be required to obtain a vending machine operator permit.

5. A vending machine permit shall be issued to the vending machine operator or wholesale dealer for each vending machine he operates and such permit shall be affixed to the upper front surface of the vending machine.

6. A wholesale dealer permit shall be issued to a wholesale dealer for each wholesale place of business operated by the wholesale dealer.

B. - C.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:902.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:1320 (July 1998), amended LR 38:145 (January 2012).

§3109. Initial Application and Related Fees

A. - E. ...

F. Pursuant to Title 26 of the Revised Statutes, the fee for a tobacconist permit shall be \$150 per year or any portion thereof based on the effective rate as of August 15, 2010.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:903.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:1321 (July 1998), amended LR 38:146 (January 2012).

Troy Hebert
Commissioner

1201#006

RULE

**Department of Treasury
Office of the Treasurer**

Permissible Investments (LAC 71:I.501)

Under the authority of R.S. 49:327 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Treasurer of the Louisiana Department of the Treasury hereby amends LAC 71:I.501.

Title 71

TREASURY—PUBLIC FUNDS

Part I. Public Funds

Chapter 5. Permissible Investments

§501. U.S. Government Agency Obligations

A. Pursuant to R.S. 49:327(B)(1)(a) and (b), obligations of or obligations guaranteed by, any of the following agencies, instrumentalities, or government-sponsored entities of the United States government, or their successor agencies, universally referred to in the investment community as "agency securities," shall be eligible for investment by the treasurer:

1. Government National Mortgage Association (GinnieMae, GNMA);
2. Federal Agriculture Mortgage Corporation (FAMC);
3. Farm Credit Financial Assistance Corporation (FCFAC);
4. Farm Credit System Banks (FFCB);
5. Farmers Home Administration (FmHA);
6. Federal Home Loan Banks (FHLB);
7. Federal Home Loan Mortgage (FreddieMac, FHLMC);
8. Financing Corporation (FICO);
9. Federal Land Bank Bonds (FLBB);
10. Federal National Mortgage Corporation (FannieMae, FNMA);
11. Resolution Funding Corporation (REFCO);
12. Small Business Administration (SBA);
13. Federal Deposit Insurance Corporation (FDIC);
14. Tennessee Valley Authority (TVA);
15. U.S. Postal Service (USPS).

B. The named agencies may issue such securities as discount notes, notes, debentures, bonds, participation certificates, mortgage-backed securities, collateralized mortgage obligations, adjustable rate mortgages, floating rate notes, and step-up notes of various maturity, call and put features. These securities issued by a named agency are illustrative only. Since agencies periodically issue a new form of security with similar guarantees, any such guaranteed security issued by a referenced agency shall be eligible for investment by the treasurer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:327(B)(1)(a) and (b).

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Office of the Treasurer, LR 15:751 (September 1989), repromulgated LR 29:192 (February 2003), amended LR 38:146 (January 2012).

John Kennedy
State Treasurer

1201#085

RULE

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

Removal of Abandoned Crab Traps (LAC 76:VII.367)

The Wildlife and Fisheries Commission does hereby amend a rule, LAC 76:VII.367, which provides for an abandoned crab trap removal program. Authority to establish these regulations is vested in the commission by R.S. 56:332(N).

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishery

§367. Removal of Abandoned Crab Traps

A. The use of crab traps shall be prohibited from 6 a.m., February 25, 2012 through 6 a.m., March 5, 2012 within that portion of St. Bernard Parish and Plaquemines Parish as described below.

1. From a point originating along the southern shoreline of the Mississippi River Gulf Outlet (MRGO) at 89 degrees 36 minutes 00 seconds west longitude; thence southward along 89 degrees 36 minutes 00 seconds west longitude to 29 degrees 39 minutes 00 seconds north latitude; thence westward along 29 degrees 39 minutes 00 seconds north latitude to 89 degrees 38 minutes 30 seconds west longitude; thence southward along 89 degrees 38 minutes 30 seconds west longitude to 29 degrees 38 minutes 00 seconds north latitude; thence westward along 29 degrees 38 minutes 00 seconds north latitude to 89 degrees 40 minutes 30 seconds west longitude; thence southward along 89 degrees 40 minutes 30 seconds west longitude to 29 degrees 34 minutes 00 seconds north latitude; thence westward along 29 degrees 34 minutes 00 seconds north latitude to the eastern shore of the Mississippi River; thence northward along the eastern shore of the Mississippi River to 89 degrees 54 minutes 00 seconds west longitude; thence northward along 89 degrees 54 minutes 00 seconds west longitude to the southern shoreline of the MRGO; thence

eastward along the southern shoreline of the MRGO terminating at the point of beginning.

B. The use of crab traps shall be prohibited from 6 a.m., March 17, 2012 through 6 a.m., March 26, 2012 within that portion of Terrebonne Parish as described below.

1. From a point originating from the intersection of LA Highway 57 and Dulac Canal; thence east along LA Highway 57 to its intersection with LA 56; thence due east to the western shoreline of Bayou Little Caillou; thence north along the western shoreline of Bayou Little Caillou to its intersection with Lapeyrouse Canal; thence east along the northern shoreline of Lapeyrouse Canal to its intersection with Bayou Terrebonne; thence south along the eastern shoreline of Bayou Terrebonne to its intersection with Seabreeze Pass; thence southwest to channel marker number 17 of the Houma Navigation Channel at 29 degrees 11 minutes 11.3 seconds north latitude 90 degrees 36 minutes 44.5 seconds west longitude; thence southwest to the northern most point on Pass la Poule Island at 29 degrees 08 minutes 33.5 seconds north latitude 90 degrees 39 seconds 01.3 seconds west longitude; thence west to Bayou Sale channel marker at 29 degrees 06 minutes 31.8 seconds north latitude 90 degrees 44 minutes 34.2 seconds west longitude; thence north to the western shoreline of Bayou Sale; thence north along the western shoreline of Bayou Sale to its intersection with Four Point Bayou; thence north along the western shoreline of Four Point Bayou its intersection with the Houma Navigation Channel; thence north along the western shoreline of the Houma Navigation Channel to its intersection with Bayou Grand Caillou; thence north along the western shoreline of Bayou Grand Caillou to its intersection with Dulac Canal; thence east along the northern shoreline of Dulac Canal and terminating at the point of beginning.

C. All crab traps remaining in the closed area during the specified period shall be considered abandoned. These trap removal regulations do not provide authorization for access to private property; authorization to access private property can only be provided by individual landowners. Crab traps may be removed only between one-half hour before sunrise to one-half hour after sunset. Anyone is authorized to remove these abandoned crab traps within the closed area. No person removing crab traps from the designated closed areas during the closure periods shall possess these traps outside of the closed area. The Wildlife and Fisheries Commission authorizes the secretary of the Department of Wildlife and Fisheries to designate disposal sites.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:332(N).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission LR 30:101 (January 2004), amended LR 31:108 (January 2005), LR 32:266 (February 2006), LR 33:113 (January 2007), LR 34:97 (January 2008), LR 36:77 (January, 2010), LR 38:146 (January 2012).

Robert J. Barham
Secretary

1201#003

RULE

Workforce Commission Office of Rehabilitation Services

Community Rehabilitation Program (LAC 67:VII.Chapter 2)

In accordance with the provisions of R.S. 49:953(B) of the Administrative Procedure Act, Louisiana Workforce Commission, Louisiana Rehabilitation Services (LRS) has amended two Sections of its Community Rehabilitation Program (CRP) Policy Manual and to add two new Sections. In §203, Organization and Management, the agency is removing the reference to *licenses* from policy, as this is not a required standard for CRPs. In §219, Vocational Modules, the agency has amend the Section to align with the federal minimum standards as identified in Federal Performance Indicator 1.2 of 34 CFR Part 361.84. Section 221, Monitoring and Quality Assurances, and §223, Denial or Revocation of Vendorship were added to provide vendors with additional guidance and to reflect current agency practices.

Title 67

SOCIAL SERVICES

Part VII. Rehabilitation Services

Chapter 2. Community Rehabilitation Program

§203. Organization and Management

A. General Requirements

1. The CRP shall allow representatives of LRS and the appropriate program office in the performance of their mandated duties to monitor all aspects of a programs' functioning which impact on clients and to interview staff members, and clients.

2. The CRP shall make any information which the program is required to have under the present requirements and any information reasonably related to assessment of compliance with these requirements available to LRS and the appropriate program office.

a. The client's rights shall not be considered abridged by this requirement.

b. A CRP shall promptly provide all necessary and needed information for review.

c. A CRP shall provide adequate space and privacy for the surveyor to review records uninterrupted.

B. A CRP shall have an administrative file including:

1. documents identifying the governing body and/or ownership of the agency;

2. list of members and officers of the governing body and their addresses and terms of membership, if applicable;

3. by-laws of the governing body and minutes of formal meetings, if applicable;

4. a written statement of the program's mission and philosophy;

5. documentation of the agency's incorporation in the state;

6. organizational chart of the agency;

7. all leases, contracts and purchase-of-service agreements to which the center is a party;

8. insurance policies;
9. annual budgets;
10. master list of all consultants used by the center.

C. Organization and Administration. The CRP should engage in short-range and long-range planning, and develop or modify its services according to identified community needs and other LRS identified needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, LR 24:1954 (October 1998), amended by Louisiana Workforce Commission, Office of Rehabilitation Services, LR 38:147 (January 2012).

§219. Vocational Modules

A. - B. ...

C. Employment Preparation (Job Opportunities Workshop, Job Readiness, Job Retention Training, etc.)

1. - 3. ...

D. Job Development/Placement

1. Job development and placement of LRS clients should meet the employment goal cited in the IPE.

2. The CRP shall provide documentation of the job development efforts, which are consistent with the employment goal on the client's IPE.

3. Client shall be placed into an integrated competitive employment position and be compensated at or above the minimum wage, but not less than the customary or usual wage paid by the employer for the same or similar work performed by individuals who are not disabled.

4. Individuals should be followed in their employment progress for at least 90 days and should be contacted at 6 month and 12 month intervals to ascertain progress.

5. The CRP shall comply with the federal minimum standards as identified in Federal Performance Indicator 1.2 of 34 CFR Part 361.84 in regards to the percentage of closed cases with a successful employment outcome.

6. The CRP shall maintain and disseminate client employment performance information to LRS staff.

E. Job Retention

1. The CRP is required to provide either on-site or off-site job supports which will enable the client to adjust to the demands of the integrated work environment and to retain employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, LR 24:1957 (October 1998), amended by Louisiana Workforce Commission, Office of Rehabilitation Services, LR 38:148 (January 2012).

§221. Monitoring and Quality Assurance

A. The CRP will be subject to site reviews by appropriate program and fiscal staff to validate compliance with CRP Standards. A review may be conducted at any point in the vendorship process.

B. The CRP will be subject to an annual renewal process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by Louisiana Workforce Commission, Office of Rehabilitation Services, LR 38:148 (January 2012).

§223. Denial or Revocation of Vendorship

A. Initial approval or renewal of vendorship can be denied or revoked for the following reasons, but is not limited to:

1. failure to meet any of the standards;
2. failure to provide required documents for the annual renewal process or formal request for documents by LRS;
3. cruelty or indifference to the welfare of consumers, and validated instance of abuse;
4. failure of the provider to hire or maintain qualified staff;
5. any act of fraud such as falsifying or altering documents;
6. unresolved findings from previous audits.

B. If a Community Rehabilitation Program vendorship is denied or revoked, the CRP has the right to appeal this decision. Appeals procedures are as follows.

1. Louisiana Rehabilitation Services will notify the Community Rehabilitation Program of the reason(s) for denial or revocation and its right to appeal in writing to be sent by certified mail.

2. The CRP may appeal the decision by submitting a written request to the LRS Director. The appeal shall clearly identify all issues in dispute; contain a full statement of the CRP's position with respect to each issue, pertinent facts and reasons to support the CRP's position, and specify the actions requested. This written request must be post marked within 30 days of the CRP's receipt of the LRS' notification of denial or revocation.

3. The LRS Director shall make a decision on the appeal and notify the CRP in writing within 30 days of the date the appeal was received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by Louisiana Workforce Commission, Office of Rehabilitation Services, LR 38:148 (January 2012).

Curt Eysink
Executive Director

1201#077

RULE

**Office of the Governor
Licensing Board for Contractors**

Contractors (LAC 46:XXIX.Chapters 1-15)

In accordance with the provisions of R.S. 49:950 et seq., which is the Administrative Procedure Act, and through the authority granted in R.S. 37:2150-2192, which is the Contractor Licensing Law, the Louisiana State Licensing Board for Contractors (LSLBC) hereby amends and adopts rules and regulations regarding contracting matters under the jurisdiction of the LSLBC.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part XXIX. Contractors

Chapter 1. General Provisions

§101. Contractor's Recordkeeping

A. It shall be the responsibility of each licensed contractor, residential building contractor, home improvement contractor, mechanical contractor, and electrical contractor to maintain adequate records at all times to show compliance with the licensure requirements of all subcontracts and subcontractors. Such records shall be made available to the board's inspectors at all reasonable times. The failure to maintain adequate records or the failure to furnish copies of such records within 72 hours notice thereof shall constitute a violation of this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:135 (March 1982), LR 12:76 (November 1986), amended by the Department of Economic Development, Licensing Board for Contractors, LR 16:601 (July 1990), LR 19:1125 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:149 (January 2012).

§103. Disassociation of a Qualifying Party

A. When a qualifying party terminates his or her employment or association with the licensee, the licensee must notify the board in writing within 30 days of the disassociation. Failure by the licensee to cause a new person to qualify as its qualifying party within 60 days of the disassociation will subject the licensee to suspension or revocation of the license.

B. Failure to notify the board of the disassociation of a qualifying party constitutes a violation pursuant to

R.S. 37:2158.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:136 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1126 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:149 (January 2012).

§105. Report of Changes

A. A licensee shall notify the board in writing of any change to the following information and shall provide any and all documentation and fees required by the board within 15 days after such change:

1. the licensee's type of business structure (sole proprietorship, partnership, limited liability company, corporation, etc.);
2. the licensee's business address;
3. the licensee's name;
4. the identity or address of the licensee's registered agent;
5. the identity, address, or ownership percentage of each shareholder;
6. the identity of each officer and the office held;
7. the identity or address of each partner; and
8. the identity or address of each member.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:149 (January 2012).

§107. Enforcement of Act and Rules

A. The board, pursuant to R.S. 37:2158 and R.S. 37:2161, may bring suit to enjoin violations of this act and the executive director and/or his designated agent and/or the legal counsel for the board is hereby authorized to institute such suit on behalf of the board and to sign the verification of the petition for injunction and to do all things necessary in connection with the institution of such legal proceedings when so directed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:137 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1126 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:149 (January 2012).

§109. Name

A. Each contractor, residential building contractor, home improvement contractor, mechanical contractor, and electrical contractor shall bid, contract for, and perform work in the name which appears on the official records of the state Licensing Board for Contractors for the current license.

B. If a licensed contractor, residential building contractor, home improvement contractor, mechanical contractor, or electrical contractor assigns a contract, or any portion of a contract for which a license is required to another contractor, residential building contractor, home improvement contractor, mechanical contractor, or electrical contractor, the person or firm to which it is assigned and who performs the work must possess the proper current license. No unlicensed contractor shall be permitted to assign a contract, or any portion or a contract, in an amount for which a license is required to a licensed contractor, residential building contractor, home improvement contractor, mechanical contractor, or electrical contractor in circumvention of the Contractors Licensing Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:137 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1126 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:149 (January 2012).

§110. Reliance upon Exemption

A. Any contractor, residential building contractor, home improvement contractor, mechanical contractor, or electrical contractor relying on an exemption when bidding shall state such exemption pursuant to R.S. 37:2163(A)(2).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:137 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1126 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:149 (January 2012).

§111. Correction without Complaint

A. If a possible violation is known to the board, the board may correct it or take appropriate action without formal complaint.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:149 (January 2012).

§113. Maintenance of Skills

A. As provided by R.S. 37:2150 after granting said license, the licensee shall at all times show its ability to serve the public economically, expediently and properly; shall possess the necessary qualifications of responsibility, skill, experience and integrity so that the licensee will not tear down standards of construction established within the industry, and shall continue to maintain the qualifications established in R.S. 37:2156.1.

B. The refusal by any licensed contractor, residential building contractor, home improvement contractor, subcontractor, mechanical contractor, or electrical contractor to honor a bid price may be grounds for a finding of a violation of the Contractors Licensing Law.

C. A residential building contractor shall be required to complete a minimum of six hours of continuing education annually by a board approved provider. Proof of compliance with this requirement shall be filed with the board annually in the format required by the board, as a condition for the maintenance and/or renewal of the license. A contractor who holds a valid, current commercial license in the major classifications of: building construction; highway, street and bridge construction; heavy construction; or municipal and public works construction, shall be deemed to have fulfilled this requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:150 (January 2012).

§115. Bankruptcy

A. It shall be the responsibility of any licensed contractor, residential building contractor, home improvement contractor, mechanical contractor, or electrical contractor who, voluntarily or involuntarily, is subjected to any provision of the laws of bankruptcy, to notify this board immediately and to make available to this board any and all information pertinent thereto.

B. Any licensed contractor, residential building contractor, home improvement contractor, mechanical contractor, or electrical contractor who is ordered by a competent court to cease operations or whose operations are closed due to operation of any law, shall notify this board immediately and make available to this board any and all information pertinent thereto.

C. If any licensed contractor, residential building contractor, home improvement contractor, mechanical contractor, or electrical contractor is ordered by a competent court to pay a final and executory judgment awarded against him in the operation of his business, for charges for labor, material, breach of contract, etc., and fails to pay said

judgment immediately upon its becoming final and executory, a hearing may be scheduled by the board for the purpose of disciplining the licensee in accordance with La. R.S. 37:2150, et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:137 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1126 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:150 (January 2012).

§117. Major Classification

A. Any contractor possessing a major classification is permitted to bid or perform any of the specialty type work listed under its respective major classification in R.S. 37:2156.2 or any other work that might not be listed which is directly related to the major classification it may hold as long as it is not prohibited by any rule, except as provided in R.S. 37:2156.2(A)(IX)(B), (C), and (D).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, LR 11:341 (April 1985), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1126 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:149 (January 2012).

Chapter 3. License

§301. Requirements

A. All applications for a license or registration shall contain the information required on the forms which are available at the offices of the State Licensing Board for Contractors, 2525 Quail Drive, Baton Rouge, LA 70808. Each application shall be time dated when received. Licensure may occur once the following minimum conditions are met:

1. the application is complete, including the required financial statement, references, and federal employer identification number;
2. all applicable fees, fines, or other sums due to the board are paid in full;
3. all examination requirements have been met; and
4. approval by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 1:401 (September 1975), LR 3:11 (January 1977), LR 8:136 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 16:602 (July 1990), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:150 (January 2012).

§307. Ownership of License

A. The license for which a person becomes the qualifying party belongs to the licensee, as: a corporate license belongs to the corporation; a partnership license belongs to the partnership; a limited liability company license belongs to the limited liability company, etc.; and an individual license belongs to the individual, regardless of the status of the qualifying party of the entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974,

amended LR 8:136 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:150 (January 2012).

§309. Application of Subsidiary

A. Any application for a license for a subsidiary shall be considered as a new application and subject to all laws and rules and regulations governing same.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2154.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:151 (January 2012).

§311. Reciprocity

A. Any applicant applying for a license who desires that any portion of the law regarding time limitations or trade examinations be waived shall cause the applicable licensing board of its domiciliary state to certify in writing that such board shall grant a Louisiana domiciliary that same waiver of such laws in that state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Economic Development, Licensing Board for Contractors, LR 16:602 (July 1990), amended LR 19:1126 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:151 (January 2012).

§315. License Revocation and Suspension

A. Any person, firm or corporation duly licensed under the provision of R.S. 37:2150 et seq., who violates any provisions of the said Louisiana Contractors Licensing Law or any rule or regulation of the board may, after due and proper hearing, have its license suspended or revoked by this board. Prior to the board's action on suspension or revocation of licenses as aforesaid, the licensee shall be given a hearing in accordance with §701 of these Rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, LR 8:138 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1126 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:151 (January 2012).

§317. Approval Withheld

A. In any instance where approval of an application has been withheld under the terms of R.S. 37:2156(D), the applicant shall have the right to apply to the board for a hearing following which the board may continue to withhold approval or grant its approval at its discretion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153 and R.S. 37:2157(D).

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, LR 8:138 (March 1982), amended LR 11:341 (April 1985), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:151 (January 2012).

Chapter 5. Examination

§501. Qualifying Party

A. Any licensee may have more than one qualifying party. Nothing in the law is to be construed so as to prohibit a licensee from having more than one qualifying party per trade.

B. If a qualifying party for a particular trade discontinues employment with a licensee, the licensee will still have a valid license and may bid on jobs in that trade classification, but the licensee must have a qualifying party before commencing work on a new job.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:136 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1127 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:151 (January 2012).

§503. Authorized to Take Examination

A.1. The qualifying party or parties authorized to take the examination are:

- a. a sole proprietor or spouse of a sole proprietor (individual);
- b. any partner (partnership);
- c. any original stockholder or incorporator (corporation);
- d. any original member (limited liability company);
- e. any employee of said applicant who has been in full-time employment for 120 consecutive days immediately preceding the examination.

2. The employee shall be prepared to execute an affidavit furnished by the board at the time he takes the examination giving his length of employment and social security number. The employee shall be prepared to show evidence of eligibility by furnishing evidence of employment for the four preceding months. The evidence of employment should demonstrate that the employee received an average gross income for the preceding 120 consecutive days at least equal to the federal minimum wage for the number of hours worked, that the employee worked an average of at least 32 hours per week for the preceding 120-day period, and that each payroll check in said period was negotiated within 30 days of the end of the pay period. Further, the employee must demonstrate that he meets the criteria to be classified as an *employee* as defined by the Internal Revenue Service. All such evidence must be submitted in a verifiable format, through records acceptable to the board.

B. No person qualifying as an employee shall be allowed to be the qualifying party for more than one company and two subsidiaries. If more than two subsidiaries are formed or acquired by a parent company, a separate qualifying party shall be registered with the board for each two additional subsidiary companies. Under no circumstances may an individual qualifying as an employee be the qualifying party for more than three such related entities, or for more than one unrelated entity.

C. An employee who has not been in full-time employment for 120 consecutive days immediately preceding the application due to an absence resulting from deployment in active military service may be considered as a full-time employee if the employee has been re-employed in accordance with R.S. 29:410 and, considering the employee's period of employment immediately preceding the absence resulting from deployment in active military service, the employee otherwise satisfies the requirement of full-time employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153(A).

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:136 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1127 (September 1993), LR 23:1495 (November 1997), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:151 (January 2012).

§505. Additional Classifications

A. A licensed contractor may add additional classifications to his license at any time provided:

1. the request for additional classification(s) is in writing;
2. a completed and notarized qualifying party application form is submitted pursuant to R.S. 37:2156.1(D)(1);
3. the required additional fees are paid and the qualifying party successfully passes the examination;
4. additions or changes to an existing license shall become effective after completion of the above requirements and upon board approval at the next regularly scheduled board meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:136 (March 1982), LR 11:341 (April 1985), LR 12:760 (November 1986), amended by the Department of Economic Development, Licensing Board for Contractors, LR 16:602 (July 1990), LR 19:1127 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:152 (January 2012).

§507. Applicants

A. Except as otherwise provided by law, all initial applicants shall be required to take and successfully pass the business and law portion of the board's examination and the trade portion where there exists an examination for same.

B. The qualifying party shall submit his application, with all supporting documentation, for approval at least 10 days prior to taking the examination. The qualifying party shall list all prior affiliations with a licensed contractor(s) and shall disclose whether or not any sanctions have been levied against such contractor(s). The qualifying party shall also state his and/or the contractor's involvement in such sanctions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:136 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 16:602 (July 1990), LR 19:1127 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:152 (January 2012).

§509. Exemption from Examination

A. A contractor, residential building contractor, mechanical contractor, or electrical contractor who is a subsidiary of a currently licensed contractor, residential building contractor, mechanical contractor or electrical contractor and who is making application for a license in the same classification(s) as that of the currently licensed contractor, residential building contractor, mechanical contractor, or electrical contractor shall not be required to take an examination on the subject for which said subsidiary

contractor, residential building contractor, mechanical contractor, or electrical contractor is seeking a license, with the approval of the board, provided that the holders of a majority of the stock in the subsidiary contractor, residential building contractor, mechanical contractor, or electrical contractor are the same as the holders of the majority of stock in the currently licensed contractor, residential building contractor, mechanical contractor, or electrical contractor, and further provided that the individual who was designated as the qualifying party at the time a license was originally issued to the currently licensed contractor, residential building contractor, mechanical contractor, or electrical contractor remains in the employ of the currently licensed contractor, residential building contractor, mechanical contractor, or electrical contractor at the time of application for license by the subsidiary contractor, residential building contractor, mechanical contractor, or electrical contractor.

B. A qualifying party may be exempt from taking another examination for the same classification for which he has previously taken and passed, subject to approval by the board.

C. Pursuant to R.S. 37:2156.1(M), any applicant seeking an exemption from the examination required for a mechanical contractor or electrical contractor license on the basis that it has worked in the mechanical or electrical construction industry must submit the following documentation:

1. proof that it holds either a mechanical or an electrical contractor's license issued prior to July 1, 2008 by a local municipality, after having passed an examination administered or written by a national testing company approved by the board; or

2. five original building permits, issued within the last three years, proving that it has actually been engaged in either the mechanical or electrical construction building industry prior to July 1, 2008. If the permit does not specify the entity or person performing the mechanical or electrical work, then additional documentation will be required to verify that the applicant actually performed the mechanical or electrical work under the permit, including but not limited to: a job proposal, contract, invoice or receipts, a signed punch list, certification of completion by the owner, and proof of payment by the owner or general contractor; or

3. proof that it has completed six mechanical or electrical construction projects within the ten-year period prior to July 1, 2008, or has constructed one such project for another person within the five-year period prior to July 1, 2008. Evidence for each job shall include, but not be limited to, a combination of at least three of the following:

a. a job proposal, contract, invoice or receipts, a signed punch list, certification of completion by the owner, proof of payment by the owner or general contractor, permit applications; and

b. evidence that the applicant operated as a business at the time of each job, including but not limited to, copies of such items as tax documents showing business income from such work, a local occupational license, a local mechanical license, receipts from material supply dealers showing that the applicant purchased sufficient materials for the work performed, state and/or federal tax identification

numbers, certificates of good standing from the Secretary of State, and similar business documentation;

c. at least one project for which sufficient proof is provided must have been in the amount of \$10,000 or more.

D. No applicant may be exempted from the required examinations pursuant to R.S. 37:2156.1(M) for more than three parishes.

E. Proof of plumbing work, including a plumbing license or permit, will be insufficient to exempt an applicant from the examination required for a mechanical contractor's license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:136 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 16:602 (July 1990), LR 19:1127 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:153 (January 2012).

§511. No Written Examination Given

A. Applicants requesting a specialty class where there is no written examination shall be examined by the board on the experience shown on his application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:136 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:153 (January 2012).

§513. Cheating

A. Anyone found using unauthorized code books, text books, pagers, beepers, cellular telephones, tape recorders, radio transmitters, portable scanning devices, cameras, portable photocopy machines, reference materials, notes, blank writing or note paper, or any other aid or electronic device not specifically provided by the Examination Section for the purpose of examination administration shall have his or her examination confiscated, the exam results invalidated, and shall have his or her name placed on the agenda for the board's next regularly scheduled meeting for consideration and appropriate action. Failure to appear before the board shall result in the imposition of a one year waiting period before the applicant may retake the examination(s).

B. It is the policy of the board that the specific contents of its examinations are considered to be proprietary and confidential. Anyone found in possession of examination questions, answers, or drawings in whole or in part shall have his or her examination confiscated, the exam results invalidated, shall be barred from taking any other examination, and shall not be eligible to become a qualifying party for the licensee for a period of one year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Economic Development, Licensing Board for Contractors, LR 21:1214 (November 1995), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:153 (January 2012).

§515. Examination Scheduling and Rescheduling

A. A candidate may request three dates upon which he or she will be available to take the examination. An attempt will be made to accommodate the candidate. New applicants for licensure will be given priority in scheduling.

B. A candidate shall have until five working days prior to the scheduled examination date in which to cancel the examination. A candidate who fails to make notification before the five-day period or a candidate who fails to appear on the scheduled examination date shall forfeit his or her examination fee and be required to submit a new examination fee before a new examination date will be scheduled. Valid explanations for failing to meet this requirement must be submitted in writing and will be evaluated on a case-by-case basis.

C. All requests for rescheduling examinations must be submitted in writing.

D. A candidate who fails an examination may schedule a second attempt 30 days or more after the date on which he or she failed the first examination.

E. A candidate who fails an examination a second or successive time may schedule an additional attempt 60 days or more after the date on which he or she failed the last examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Economic Development, State Licensing Board for Contractors, LR 21:1214 (November 1995), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:153 (January 2012).

§517. Examination Administration Procedures

A. Administrative check-in procedures begin one-half hour before the examinations begin. Candidates must report to the board office for processing at least 15 minutes prior to the examination's starting time. Any candidate reporting after the 15-minute reporting time may not be allowed admittance to the examination room. Every candidate must present acceptable government-issued photographic identification to be admitted to the examination room.

B. Personal items (e.g., telephones, pagers, calculators, purses, briefcases, etc.) shall not be allowed in the testing room or in the waiting room of the testing room. A candidate shall not have access to these items during examination administration.

C. A candidate wearing bulky clothing or attire which would facilitate concealment of prohibited materials shall be requested to leave said clothing or attire outside the examination room or to remove it and place it in the front of the examination room. Failure to remove the article shall constitute permission to search for contraband materials, or a cancellation of his or her scheduled examination, at the option of the candidate.

D. All examination activities are subject to being filmed, recorded, or monitored.

E. A candidate taking an examination shall not be allowed access to telephones or other communication devices during the course of the examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Economic Development, Licensing Board for Contractors, LR 21:1214 (November 1995), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:153 (January 2012).

§519. Test Item Challenges

A. A candidate who believes that an individual test item may not have a correct answer or may have more than one correct answer shall be afforded an opportunity to challenge the test item. The candidate shall record his or her comments

in writing on a form prepared by the test monitor immediately after the examination. Comments will not be accepted at any other time. Comments should provide a detailed explanation as to why the candidate feels the item is incorrect. General comments (e.g., "This item is wrong.") will not be investigated.

B. Examination comments shall be reviewed.

C. If a test item comment is deemed to be valid, the director of the Examinations and Assessment Section shall have the authority to change a grade based upon test item comment(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Economic Development, Licensing Board for Contractors, LR 21:1214 (November 1995), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:153 (January 2012).

§521. Examination Reviews Prohibited

A. Examinations may not be reviewed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Economic Development, Licensing Board for Contractors, LR 21:1215 (November 1995), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:154 (January 2012).

Chapter 7. Hearings; Meetings

§701. Hearings

A. Hearings may be conducted by the board's legal counsel at regular or special meetings whenever deemed necessary and special hearing officers may be hired at the board's discretion. Hearings shall be conducted in accordance with the Administrative Procedure Act.

B. Written notice shall be given to all parties at least five days prior to such hearings or special meetings. The board members shall be notified at least three days prior to such hearings or special meetings. The notice shall include the time, place and purpose of the hearing or special meeting and may be held at any place within the state.

C. Confirmation of the written notice required by this Section may be proved by any one of the following:

1. a signed return receipt of certified or registered mail, confirming delivery and receipt of the required notice;

2. a signed confirmation by a board employee that actual physical delivery was made to the contractor, or left at the address on file with the board for that contractor;

3. a confirmation of facsimile transmission, if the contractor has provided the board with a facsimile number in documents on file with the board;

4. a copy of notice by electronic transmission, if the contractor has provided the board with an electronic address in documents on file with the board;

5. a printed electronic confirmation of delivery and/or confirmation of signature from the U.S. Postal Service;

6. a written, electronic, or facsimile response to the notice or subpoena provided therewith, from the contractor or its representative; or

7. appearance by the contractor or its authorized representative at the hearing.

D. As authorized by R.S. 49:962, the board may hear and decide petitions for declaratory orders and rulings as to the applicability of any statutory authority or of any rule or order of the board. Such orders and rulings shall have the

same status as board decisions or orders in adjudicated cases.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 4:69 (March 1978), LR 8:137 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1127 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:154 (January 2012).

§703. Disqualification or Debarment by Any Public Entity

A. Pursuant to the requirements of R.S. 37:2158(B), a public entity which disqualifies any person or licensee pursuant to R.S. 38:2212(J) must provide the board with written notification thereof within 30 days of the date of such disqualification. The notice required by this Section shall include the basis for the disqualification, the terms and provisions thereof, and copies of the evidence or basis upon which the disqualification was imposed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153(A).

HISTORICAL NOTE: Adopted by the Department of Economic Development, Licensing Board for Contractors, LR 23:1495 (November 1997), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:154 (January 2012).

Chapter 9. Subcontractors

§901. Subcontractors

A. It shall be the responsibility of a licensed contractor, residential building contractor, mechanical contractor, or electrical contractor to secure the current valid license number of any subcontractor who submits a bid to it or performs work for which a license is required. If any licensed contractor, residential building contractor, mechanical contractor, or electrical contractor awards a contract for which a license is required to any unlicensed subcontractor, the license of the awarding contractor, residential building contractor, mechanical contractor, or electrical contractor may be suspended, revoked or rescinded after a hearing is conducted by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:154 (January 2012).

§903. Subcontractor License; Default

A. It shall be a violation for any general contractor, contractor, owner, awarding authority, subcontractor, or any other person to contract or subcontract all or any portion of work to any other contractor or subcontractor unless said contractor or subcontractor was duly licensed by the board as of the final date fixed for the submission of bids on said work from the primary contractor to the owner or awarding authority. This rule shall be subject to the provisions and limitations established by R.S. 37:2156(B) and (D).

B. If work is subcontracted as per this rule, and the subcontractor should default for any reason, the awarding authority shall have the right to take bids from any subcontractor that is properly licensed at the time of this default.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, LR 8:138 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1128 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:154 (January 2012).

Chapter 11. Bidding

§1103. Proper Classification

A. All licensed contractors bidding in the amount for which a license is required shall be required to have qualified for the classification in which they bid.

B. When two or more contractors bid as a joint venture on any project in the amount for which a license is required with R.S. 37:2150 et seq., all parties are required to be licensed at the time the bid is submitted. Each party to the joint venture may only perform within the applicable classifications of the work of which it is properly classified to perform.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, LR 8:138 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:155 (January 2012).

§1109. Division of Contract

A. Any division of a contract into parts which would avoid the necessity of a license to bid for, contract for, or perform the work, will be disregarded, and the parts of the contract will be treated as one contract totaling the amount of these parts when combined.

B. For the purpose of determining a scope of work, the board should review whether the contract or contracts in question constitute a single scope of work or whether they constitute separate scopes of work. The board may be guided in this interpretation by a review of the drawings, plot plans, blueprints, architectural plans, site maps, technical drawings, engineering designs, sketches, diagrams, black lines, blue lines, drafts or other renderings depicting the total scope of work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:155 (January 2012).

§1111. Failure to Insure or Bond

A. Whenever a licensed contractor, residential building contractor, home improvement contractor, mechanical contractor or electrical contractor bids a project within the scope of this act and is awarded the contract, the refusal or inability of the contractor, residential building contractor, home improvement contractor, mechanical contractor, or electrical contractor to provide bonding and insurance coverage as required by the bid proposal, may be grounds for a finding of a violation of §113.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:137 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1128 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:000 (January 2012).

§1113. Electrical or Mechanical Work

A. Any person, firm, partnership, co-partnership, association, corporation, or other organization bidding on or performing a job for which a license is required, the majority of which job is classified as V. Electrical Work or VI. Mechanical Work, the licensee shall hold the major classification or subdivision thereunder of electrical work or mechanical work as the case may be.

B. On all jobs involving mechanical or electrical work, the board shall consider the monetary value of the electrical or mechanical material and/or equipment furnished by the owner or builder, if any, in determining the amount of electrical or mechanical work involved.

C. The board takes cognizance of all local ordinances and codes regulating the licensing of electrical and mechanical contractors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2159 and 37:2153.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:155 (January 2012).

Chapter 13. Fees

§1301. Fee for Licenses

A. The annual fee for licenses for the following year may be set by the board at its July meeting each year. If a new fee is not set, the fee(s) for the prior year shall continue to be in full force and effect until changed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended LR 2:271 (September 1967), LR 8:136 (March 1982), LR 10:199 (March 1984), LR 11:341 (April 1985), LR 12:761 (February 1986), amended Department of Economic Development, Licensing Board for Contractors, LR 19:1128 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:155 (January 2012).

Chapter 15. Residential

§1501. Definitions

A. Anyone bidding or performing the work of a general contractor on a residential project in the amount for which a license is required must be licensed under the classification *residential construction*. This requirement shall not include individuals who build no more than one residence for their own personal use as their principal residence per year.

B. A subcontractor, architect or engineer who acts as a residential building contractor as defined in R.S. 37:2150.1(11) must possess a residential construction license.

C. "Cost of a project" includes the value of all labor, materials, subcontractors, general overhead and supervision. With respect to modular housing, "cost of the project" shall not include the cost of the component parts of the modular home in the condition each part leaves the factory, in accordance with R.S. 40:1730.71.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Economic Development, Licensing Board for Contractors, LR 22:4 (February 1996), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:155 (January 2012).

§1503. Requirements

A. All residential building contractors shall work in the name which appears on the official records of the State Licensing Board for Contractors for the current license.

B. If a licensed general residential contractor assigns a contract, or any portion of a contract, in the amount for which a license is required to another general residential contractor, the person or firm to which it is assigned and/or who performs the work must possess the proper current license. No unlicensed contractor shall be permitted to assign a contract, or any portion of a contract, in the amount for which a license is required to a licensed contractor in circumvention of the laws of the state of Louisiana.

C. All applications for a residential contractors license shall contain the information required on the forms which are available at the offices of the State Licensing Board for Contractors, 2525 Quail Drive, Baton Rouge, Louisiana 70808. The application shall be time dated when received and shall be reviewed by the Residential Contractors Licensing Board Subcommittee prior to being submitted to the Contractors Licensing Board at the next regularly scheduled meeting of the board, provided that:

1. the application is complete, including the required financial statement, references, federal identification number, certificate of workers compensation insurance, certificate of general liability insurance in the minimum amount of \$100,000, and properly notarized;

2. all applicable fees, fines, or other sums due to the board are paid in full;

3. the complete application is received and verified by the board in time to comply with all notice requirements; and

4. all examination requirements have been met.

D. Workers compensation and general liability insurance, obtained from an insurer authorized to sell those forms of insurance coverage in the state, shall be maintained continuously by residential building contractors. Insurance certificates evidencing current workers compensation and general liability insurance shall be submitted with each new application, every renewal application, and upon the renewal date of coverage. In the event of a lapse of insurance coverage, a cease and desist order shall be issued and such lapse shall be grounds for suspension or revocation of the license after proper hearing.

E. The qualifying party for each applicant must pass any examinations required and administered by the state Licensing Board for Contractors.

F. The qualifying party shall be an individual owner, an original incorporator, partner, member or shareholder, or an employee of the applicant who has been in full-time employment for 120 consecutive days immediately preceding the application. Any licensed residential building contractor may have more than one qualifying party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Economic Development, Licensing Board for Contractors, LR 22:94 (February 1996), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:156 (January 2012).

§1505. Exceptions

A. An applicant for a residential building contractor's license who can show written proof that it possessed a contractor's license for Building Construction as required by

R.S. 37:2150-2164 prior to February 1, 1996 shall not be required to take the examinations required by the State Licensing Board for Contractors, but shall meet all other requirements for such license.

B. An applicant who can show written proof that he holds a residential construction license issued by a local municipality issued prior to February 1, 1996 that administered a test written by a national testing company, approved by the state Licensing Board for Contractors, shall be exempt from taking the examinations required by the board, but shall meet all other requirements for such license.

C. An applicant seeking an exemption from the examinations required by the state Licensing Board for Contractors for having been actively engaged in residential building construction prior to February 1, 1996 as stated in R.S. 37:2167(D)(3) and (4) shall, in addition to all other requirements for licensure:

1. submit copies of the required building permits to the state Licensing Board for Contractors with the application, and

2. submit requests for any exceptions or other special requests in writing to the state Licensing Board for Contractors Residential Subcommittee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Economic Development, Licensing Board for Contractors, LR 22:94 (February 1996), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:156 (January 2012).

§1507. Violations

A. The Licensing Board for Contractors Residential Subcommittee has the authority to conduct hearings on alleged violations by residential building contractors in accordance with the provisions of R.S. 37:2158.

B. The Licensing Board for Contractors Residential Subcommittee shall make recommendations to the Contractors Board regarding their findings and determinations as a result of the hearings on said alleged violations.

C. Residential building contractors whose alleged violations were heard by the subcommittee and a recommendation rendered, may request to appear at the next regularly scheduled board meeting or at any other board meeting where their alleged violations are brought before the board for final action, and may be given an opportunity to address the board regarding the subcommittee's recommendation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Economic Development, Licensing Board for Contractors, LR 22:95 (February 1996), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:156 (January 2012).

§1509. Penalties

A. The Subcommittee has the authority to issue, suspend, modify or revoke residential contractors licenses, subject to the final approval of the state Licensing Board for Contractors.

B. In accordance with the provisions of R.S. 37:2172, the subcommittee shall have the authority to issue a fine not to exceed \$500 for each violation, for the causes listed in R.S. 37:2158, subject to final approval by the state Contractors Licensing Board.

C. In addition to or in lieu of any of the penalties provided in this Chapter, the subcommittee is empowered to issue a cease and desist order. Further, the subcommittee may seek the other civil remedies provided in R.S. 37:2162 for violations of this Chapter, subject to the final approval of the state Licensing Board for Contractors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Economic Development, Licensing Board for Contractors, LR 22:95 (February 1996), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:156 (January 2012).

Michael McDuff
Executive Director

1201#093

Notices of Intent

NOTICE OF INTENT

Department of Agriculture and Forestry Board of Animal Health

Health Certificates and Health Requirements
Chronic Wasting Disease (LAC 7:XXI.1503 and 1515)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and with the enabling statutes, R.S. 3:2093, 3:2095, and 3:2097, the Louisiana Board of Animal Health proposes to adopt regulations to impose additional health requirements for the transport or movement of deer through or into this state.

Chronic Wasting Disease (CWD) infects deer and elk herds in several states and in the Canadian province of Saskatchewan. The disease affects animals of the family Cervidae, such as elk, black-tailed deer, mule deer, red deer and white-tailed deer. CWD is a neurodegenerative disease that is related to other spongiform encephalopathies such as Bovine Spongiform Encephalopathy, (Mad Cow Disease), in cattle and Scrapie in sheep. There is no known cure for CWD, which appears to have a one hundred percent mortality rate. The means by which CWD is transmitted is not known at this time, although animal to animal contact appears to be a transmittal method. The disease is very resistant and may be able to live outside an animal for an extended period of time. Although CWD appears to be limited to deer and elk, and is not known to be capable of being transmitted to cattle or other livestock, the disease is so poorly understood that it may pose a risk to other livestock.

In 2001, the United States Department of Agriculture declared a state of emergency in regard to CWD. Other states, such as Texas and Florida, have prohibited the importation of deer and elk. The cost of monitoring and controlling CWD has reached or exceeded \$1,000,000 in some states.

This state has a substantial alternative livestock industry that raises imported exotic deer and antelope, elk, and farm-raised white-tailed deer. The alternative livestock industry in Louisiana is growing and is becoming an important part of the Louisiana agricultural industry. The alternative livestock industry generates an economic impact in Louisiana of over \$30,000,000 annually.

For these reasons CWD presents a peril to the public health, safety and welfare, as well as a peril to Louisiana's livestock and wild deer. As a result of this peril, the Louisiana Board of Animal Health, by adoption of these regulations, is exercising its plenary power to deal with contagious and infectious diseases of animals to prevent the introduction of CWD into Louisiana.

Title 7

AGRICULTURE AND ANIMALS

Part XXI. Diseases of Animals

Chapter 15. Alternative Livestock—Imported Exotic Deer and Imported Exotic Antelope, Elk and Farm-Raised White-Tailed Deer

§1503. Definitions

A. For purposes of these rules and regulations the following words and phrases shall have the meaning given herein.

* * *

Chronic Wasting Disease (CWD)—a contagious neurological disease affecting deer, elk and moose which causes a characteristic spongy degeneration of the brain of infected animals resulting in emaciation, abnormal behavior, loss of bodily functions and death.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:282 (February 1998), amended LR 24:1671 (September 1998), LR 38:

§1515. Health Certificates and Health Requirements

A. - B. ...

C. Elk, black-tailed deer, mule deer, red deer, white-tailed deer, and any imported exotic deer as defined in LAC 7:XXI.1503 (collectively referred to in this Section as "deer") shall not be admitted or readmitted (collectively referred to as "admitted") into this state without specific written authorization from the commissioner or his designee.

1. Deer being transported through this state in interstate commerce shall be exempt from the provisions of this Section if there are no scheduled stops for offloading the deer or if such stops would reasonably place the deer in contact with other deer or cattle.

a. If deer being transported through this state in interstate commerce must be offloaded due to a mechanical breakdown or an emergency situation then the state veterinarian shall be immediately notified of the situation.

b. No deer shall be offloaded without authorization from the state veterinarian to offload the deer.

c. The deer shall be offloaded, confined, and quarantined in strict compliance with the instructions provided by the state veterinarian and shall be kept confined, quarantined and re-loaded under the direct supervision of the state veterinarian's representative.

2. Deer within this state that are moved or transported out of this state, even temporarily, shall not be admitted back into this state without the specific written authorization of the commissioner or his designee.

D. A person must provide the state veterinarian the following documentation or information as to each animal in

order to obtain the authorization necessary for admission of the deer into this state.

1. A request stating the number and type of deer to be admitted, the origin of the deer, the destination of the deer, any stops made or anticipated to be made between the origination point and the final destination where the deer will be offloaded or held in proximity to other deer, the name and address of the requestor, the name and address of the owner of the deer and the reason for the admission of the deer.

2. A certificate of veterinary inspection issued within the preceding 30 days by an accredited veterinarian on the deer listed in the written request which includes a permit number obtained from the department's office of animal health services.

3. A statement by the owner of the deer that he will reimburse all costs incurred by the commissioner or the department for feeding, sheltering, caring, and disposing or destroying of any deer seized and quarantined by the department for violation of any conditions, quarantines, or restrictions placed on deer admitted to the state.

4. Written and signed certification, whether signed jointly or separately, by both the owner of the deer and the inspecting veterinarian of the following information.

a. The distance to the nearest confirmed case of CWD if the deer are to be admitted from any state that has reported a CWD case within the last five years.

b. Whether the facility the deer are coming from is enclosed by a single fence or double fence.

c. That each deer:

i. is from a herd that has participated in a recognized CWD surveillance and monitoring program for at least 60 months;

ii. has been in the herd from which the deer is being moved for at least 60 months, or has been in the herd for its entire life if younger than 60 months of age, or was placed in the herd from a herd that had participated in a recognized CWD surveillance and monitoring program for at least 60 months prior to the removal of the deer from the second herd and placement in the first herd;

iii. comes from a herd that is not within 25 miles of a confirmed case of CWD occurring within the previous 60 months if the facility that the deer is coming from is a single fenced facility; or

iv. comes from a herd that is not within five miles of a confirmed case of CWD occurring within the previous 60 months if the facility that the deer is coming from is a double fenced facility.

5. Documentation that shows that each deer meets the health requirements set out in LAC 7:XXI.107 and 7:XXI.1515.

E. The commissioner or his designee shall have the discretion to refuse to authorize the admission of deer into this state, even if all the criteria set out in Subsection D have been met, if in his informed opinion based on advice and recommendations from accredited veterinarians on staff with the department or employed by the federal government or from reliable veterinarian research or other credible

information, he believes that admission of the deer may jeopardized the health of the deer population in this state or run the risk of bring CWD into the state.

F. The commissioner or his designee may, at his discretion, impose conditions, quarantines, and restrictions on the admission of any deer into this state if he believes that such conditions, quarantines, and restrictions are necessary to protect the health of this state's deer population or to control the risk of bringing CWD into the state.

1. Deer admitted into the state subject to any condition, quarantine or restriction may be seized by the department and placed in quarantine on order of the commissioner, at the owner's expense, for any violation of any condition, quarantine or restriction.

2. The commissioner, on behalf of the board, may take any legal action necessary to obtain a court order to dispose of or destroy any such deer seized by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093, 3:2095, and 3:2097.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:282 (February 1998), amended LR 24:1675 (September 1998), LR 38:

Family Impact Statement

The impact of the proposed action regarding the rules and regulations set out in the Notice of Intent on family formation, stability, and autonomy has been considered. It is estimated that the proposed action will have no significant effect on the (1) stability of the family, (2) authority and rights of parents regarding the education and supervision of their children, (3) functioning of the family, (4) family earnings and family budget, (5) behavior and personal responsibility of children, or (6) ability of the family or a local government to perform the function as contained in the proposed Rule.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

Interested persons may submit written comments, data, opinions, and arguments, whether for, against, or regarding these proposed regulations. Written submissions are to be directed to Dr. Diane Stacy, Assistant State Veterinarian of the Department of Agriculture and Forestry, 5825 Florida Boulevard, Baton Rouge, LA 70806 and must be received no later than 4 p.m. on February 9, 2012. No preamble regarding these proposed regulations is available.

Mike Strain, DVM
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Health Certificates and Health
Requirements—Chronic Wasting Disease**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule change will have no impact on state or local government expenditures. The proposed rule change imposes additional health requirements for the transport or movement of deer through or into the state. The rule is intended to help prevent the introduction of Chronic Wasting Disease (CWD) and to prevent the loss of wild and farm-raised deer in Louisiana. The proposed rule provides relative to health certificates and health requirements for elk, black-tailed deer, mule deer, white-tailed deer, and any imported exotic deer admitted or readmitted into the state.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on revenue collections to state or local governmental units as a result of the proposed rule change.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

The proposed rule change will affect any person who owns, maintains, or produces alternative livestock in this state or who imports alternative livestock into this state. The commissioner may seize and quarantine deer for violation of any condition at the owner's expense. There are approximately 400 alternative livestock farmers in this state and approximately 70 entry permits were issued in the past year. No new forms will be created because a health certificate is currently required before importing animals in this state.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

The proposed rule amendments will have no effect on competition or employment in the public or private sectors.

Judy Fletcher
Director
1201#070

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Agriculture and Forestry
Office of the Commissioner**

**Railroad Crossings—Agricultural and Private Rural
Residence (LAC 7:XLVII.Chapter 1)**

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and with the enabling statute, R.S. 48:390(H), the commissioner of agriculture and forestry, proposes to adopt regulations to define private rural residence and agricultural crossings; to provide the procedure for the approval of applications to keep private rural residence and agricultural crossings open, or to reopen private crossings closed by railroad corporations; and for ordering railroad corporations to allow such crossing to remain open or to be reopened.

The legislature enacted *Act 2008, No. 773* in the 2008 Regular Legislative Session requiring the commissioner of agriculture and forestry to order railroad corporations owning or operating a railway in this state to allow certain private rural residence or agricultural crossings to remain

open. The legislature also permits the commissioner of agriculture and forestry to order a railroad corporation to open certain private crossings closed by a railroad corporation. Lastly, Act 773 requires the Department of Agriculture and Forestry to promulgate rules and regulations for the implementation of Act 773.

Title 7

AGRICULTURE AND ANIMALS

**Part XLVII. Railroad Crossings—Agricultural and
Private Rural Residence**

Chapter 1. Railways—Access Over Right-of-Way

§101. Definitions

Agricultural Operation—the commercial production, storage, or processing of any agronomic, floricultural, horticultural, viticultural, silvicultural, or aquacultural crop or product.

Agricultural Crossing—a private road, street, lane, or path by which vehicles or equipment used in an agricultural operation may traverse a railway right-of-way.

Commissioner—the Louisiana Commissioner of Agriculture and Forestry.

Department—the Louisiana Department of Agriculture and Forestry.

Person—an individual, corporation, limited liability company, or other legal entity.

Private Crossing—an agricultural crossing or a rural residence crossing.

Railroad Corporation—a business or company that owns or operates a railway in this state.

Railway—a road composed of parallel steel rails supported by ties and providing a track for locomotive drawn trains and other rolling stock.

Rural Residence Crossing—a private road, street, lane, or path by which automobiles or other self propelled vehicles or equipment may traverse a railway right-of-way to get to and from a private rural residence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:390(H).

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 38:

§103. Authority of the Commissioner

A. The commissioner may order a railroad corporation to keep a private crossing open or to immediately restore and keep in good repair a private crossing closed by the railroad corporation upon written request by a person eligible to make such a request if the commissioner determines that the order is necessary to carry out the provisions of R.S. 48:390(H).

B. After receiving the written request, the commissioner may order the department to conduct an investigation.

C. The decision of the commissioner shall be based on the information submitted to him or obtained by him as a result of an investigation into the matter by the department.

D. The decision of the commissioner shall be in the exercise of the discretionary authority granted to him by R.S. 48:390(H) and shall be the final administrative decision in the matter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:390(H).

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 38:

§105. Eligibility for Making a Request

A. No person may make a request for an order to keep a private crossing open or to reopen a private crossing unless the person owns, leases, or otherwise has legal use or possession of land that is split by a railway or has no other practical access to that person’s private rural residence or agricultural operation.

B. A person may make the request only in his name either directly or through an authorized legal representative.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:390(H).

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 38:

§107. Procedure for Requesting an Order from the Commissioner

A. The written request shall be made to the Commissioner of Agriculture and Forestry, 5825 Florida Boulevard, Baton Rouge, LA 70806 and shall be signed by the person submitting the request. The request shall include the following information:

1. the name, physical address, mailing address, and telephone number of the person or business submitting the request;
2. the name and business structure under which the individual or business conducts an agricultural operation and the physical address, mailing address and telephone number of the agricultural operation, if different than the information provided for the person or business making the request;
3. the physical location of the rural residence or agricultural operation;
4. the relationship of the person or business to the rural residence or agricultural operation affected or to be affected by the closing of the private crossing;
5. the nature of the agricultural operations, if any, affected or to be affected by the closing of the private crossing;
6. the hardship that will be or has been created by the closing of the private crossing;
7. the name of the railroad corporation owning or operating the railway that plans to close or has closed the private crossing;
8. the date of the scheduled closing or the date the private crossing was closed;
9. the location of the next available closest public or private crossing that the person or business would be able to access;
10. any other information requested by the commissioner or his designee.

B. The person making the request shall also submit the following documentation.

1. Proof of ownership or possession, such as a tax statement, deed, lease, title opinion or judgment of possession related to the rural residence or agricultural operation.
2. A map, plat, survey, or aerial or satellite photograph showing the railway and the property in relation to each other.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:390(H).

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 38:

§109. Notice to a Railroad Corporation

A. Upon receipt of a written request for an order to stop the closure of a private crossing or to reopen the crossing, the commissioner shall provide the appropriate railroad corporation with a copy of the request.

B. The railroad corporation shall have thirty calendar days from the receipt of the mailing of a copy of the request to file a response with the commissioner and to submit any documents and information that the corporation wishes to submit with its response.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:390(H).

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 38:

§111. Notice of Decision

A. The commissioner’s order granting or denying the request shall be in writing and shall be provided to the person making the request and the railroad corporation by certified U.S. Mail, return receipt requested, or by a commercial courier that provides a delivery receipt.

B. An order directing the railroad corporation to allow the private crossing to remain open or for the private crossing to be reopened and kept in good repair shall accompany the commissioner’s decision if such an order is issued by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:390(H).

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 38:

Family Impact Statement

The impact of the proposed action regarding the rules and regulations set out in the Notice of Intent on family formation, stability, and autonomy has been considered. It is estimated that the proposed action will have no significant effect on the (1) stability of the family, (2) authority and rights of parents regarding the education and supervision of their children, (3) functioning of the family, (4) family earnings and family budget, (5) behavior and personal responsibility of children, or (6) ability of the family or a local government to perform the function as contained in the proposed Rule.

Public Comments

Interested persons may submit written comments, data, opinions, and arguments, whether for, against, or regarding these proposed regulations. Written submissions are to be directed to Tabitha Gray, Executive Counsel, Department of Agriculture and Forestry, 5825 Florida Boulevard, Baton Rouge, LA 70806 and must be received no later than 4 p.m. on February 9, 2012. No preamble regarding these proposed regulations is available.

Mike Strain, DVM
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Railroad Crossings—Agricultural and
Private Rural Residence**

NOTICE OF INTENT

**Department of Children and Family Services
Division of Programs
Economic Stability Section**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule amendment may increase state costs by an indeterminable amount. The commissioner may order the department to conduct investigations into whether to keep a private crossing open or to reopen a private crossing. To the extent that these investigations are undertaken, an indeterminable increase in expenditures will result.

Act 773 of the 2008 Regular Legislative Session required the Commissioner of Agriculture and Forestry to order railroad corporations owning or operating a railway in this state to allow certain private rural residence or agricultural crossings to remain open. The legislature also permits the Commissioner of Agriculture and Forestry to order a railroad corporation to open certain private crossings closed by a railroad corporation.

The proposed regulations define private rural residence and agricultural crossings; provide the procedure for the approval of applications to keep private rural residence and agricultural crossings open, or to reopen private crossings which have been closed by railroad corporations; and provide for ordering railroad corporations to allow such crossings to remain open or to be reopened.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on revenue collections to state or local governmental units as a result of the proposed rule change.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

Farmers, foresters and other agricultural producers who own or use land impacted by a railroad crossing will benefit from the proposed rule amendments because there will be a procedure in place to ensure access across a railway crossing in order to be able to harvest or process agricultural or forestry products. This will prevent them from being inhibited or land-locked by the closing of a crossing, thus allowing them to be able to move their products in commerce. Moreover, this will prevent them from having to build alternative access roads, which is an added expense to producers, or having to find alternative access roads when that is not economically viable to them or if there are not any available.

The estimated cost to impacted railroad corporations is also indeterminable. Railroad companies currently operate and maintain the private rural residence and agricultural crossings. Railroad corporations that own or operate a railway in this state and landowners who own or are impacted by an agricultural crossing or rural residence crossing will be affected by the proposed rule amendments. According to the Statewide Transportation Plan, there are approximately 6,700 highway rail crossings in Louisiana, of which approximately 3,600 are private. The anticipated number of requests to order a private crossing to remain open or restored is unknown.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

The proposed rule amendments are anticipated to have no effect on competition and employment in the public and private sectors.

Judy Fletcher
Director
1201#071

Evan Brasseaux
Staff Director
Legislative Fiscal Office

Verbal Fair Hearing Withdrawals (LAC 67:III.Chapter 3)

The Department of Children and Family Services has exercised provisions of the Administrative Procedure Act, R.S. 49:953(B) to amend the Louisiana Administrative Code, Title 67, Part III, Subpart 1, Chapter 3, Sections 301, 303, 305, 307, 309, 311, 313, 315, 317, 319, 321, 323, 325, 327, 329, 331, and 333.

Pursuant to the authority granted to the Department of Children and Family Services, the agency will amend Sections 301, 303, 305, 307, 309, 311, 313, 315, 317, 319, 321, 325, 327, 329, 331, and 333 of LAC 67:III.Chapter 3, to make the following changes and/or corrections to agency, section, or program names: change Office of Family Support to Department of Children and Family Services (DCFS), change the word agency to department, change the Department of Social Services (DSS) to the Department of Children and Family Services, change examiner/case manager to worker, change specialist to program coordinator, change eligibility worker to worker, change Food Stamp to Supplemental Nutrition Assistance Program (SNAP), change Kinship Care Subsidy to KCSP, change child care assistance to CCAP, correct supplemental security income to supplemental security income (SSI), change the agency responsible for providing the Fair Hearing Pamphlet from DSS Bureau of Appeals to Division of Administrative Law (DAL) or DCFS office, change DSS Bureau of Appeals to DCFS Appeals Unit, change FIND Work Program to STEP Program, and remove the reference to Refugee Cash Assistance (RCA).

Pursuant to the authority granted to the Department of Children and Family Services, and in accordance with Act 683 of the 2010 Legislative Session, the agency will amend Sections 307, 319, 321, and 327, of Subpart 1, Chapter 3, to add that an appeal is timely requested if the request is received via FAX, add that the DCFS Appeals Unit will schedule or cause to be scheduled all Fair Hearings and provide or cause to be provided a copy of the summary of evidence with the notice for scheduling the fair hearing.

Pursuant to a Food and Nutrition Services (FNS) SNAP letter dated September 21, 2011 granting approval to allow verbal withdrawal of appeals, Section 323 of Subpart 1, Chapter 3, is being amended to accept a verbal statement from the household or its representative to withdraw a fair hearing for all programs.

Title 67

SOCIAL SERVICES

Part III. Economic Stability and Self-Sufficiency

Subpart 1. General Administrative Procedures

Chapter 3. Hearings

§301. Definitions

A. For all purposes of these rules and regulations, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise.

* * *

Adverse Notice—any written notice informing the client of any department action which unfavorably affects his case and when that action is effective.

Agency—Repealed.

Agency Conference—Repealed.

Appeal Decision—an official report which contains the substance of what transpired at the hearing and a summary of the case facts, identifies pertinent state or federal regulations, and gives the reason for the decision. It is the final written decision of the Department of Children and Family Services (DCFS), Appeals Unit, on the issue in question.

Authorized Agent—any person acting on behalf of an applicant/recipient. This may include a friend, relative, attorney, paralegal, legal guardian, conservator, or foster care provider. For Supplemental Nutrition Assistance Program (SNAP) purposes, it may also mean an authorized representative or another household member.

Benefits—are any kind of assistance, payments or benefits made by the department for Family Independence Temporary Assistance Program—FITAP), Strategies to Empower People (STEP) Program, Kinship Care Subsidy Program (KCSP), Supplemental Nutrition Assistance Program (SNAP), or Child Care Assistance Program—CCAP).

Department—any operating unit of the Department of Children and Family Services (DCFS) such as local, regional, or state offices.

Department Conference—a meeting between the claimant and the department where a supervisor or administrator explains the action that is being appealed. It may be conducted by telephone if the claimant agrees. The worker/program coordinator may participate if the supervisor deems this appropriate and the claimant is in agreement.

Directive—a written communication from the DCFS Appeals Unit to the department giving specific instructions to be taken as a result of a hearing. This action shall be taken within 10 days and reported to the DCFS Appeals Unit within 14 days of the receipt of the directive.

Fair Hearing—an administrative procedure during which a claimant, or a group of claimants, or his, or their, authorized agent may present a grievance and show why it is believed the department action, proposed action, or inaction is not fair and should be corrected. A fair hearing meets the due process requirements set forth in the U.S. Supreme Court decision in *Goldberg vs. Kelly*.

Public Assistance Household—is a SNAP household in which all members receive FITAP, KCSP, or federal Supplemental Security Income (SSI).

Request for a Fair Hearing—is any clear expression, oral or written) by the claimant or his authorized agent that he wants to appeal a department decision to a higher authority.

Summary of Evidence—is a document prepared by the department stating the reasons the department decided to take the action being appealed. Its purpose is to provide the

claimant information needed to prepare his case for the hearing.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:237.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:689 (July 1985), amended by Department of Social Services, Office of Family Support, LR 25:2259 (November 1999), LR 26:350 (February 2000), amended by the Department of Children and Family Services, Division of Programs, Economic Stability, LR 38:

§303. General Rules and Principles

A. The DCFS Appeals Unit is responsible for providing a system of hearings which must meet the due process standards set forth in federal regulations, state laws, and *Goldberg vs. Kelly* 397 US 245 (1970).

B. Each applicant is informed by the application and by the appropriate notification forms (as decisions are made affecting his case) of his right to a hearing, of the method by which a hearing may be requested, and who may present his case. Detailed information concerning the Fair Hearing procedure is contained in the Fair Hearing Pamphlet, Form OFS 5F, (which is provided by the Division of Administrative Law (DAL) or DCFS office) when a fair hearing is requested.

C. - D.7. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2260 (November 1999), amended by the Department of Children and Family Services, Division of Programs, Economic Stability, LR 38:

§305. Right to Request a Fair Hearing

A. Every applicant/recipient who believes he has been unjustly treated regarding benefits or services under any program administered by the Department of Children and Family Services may request a fair hearing.

B. The DCFS Appeals Unit has the right to deny a request for a fair hearing when:

1. the request is outside of the jurisdiction of the DCFS Appeals Unit;
2. the request for a hearing is made after the time limit has expired; or
3. the sole issue is one of state or federal law or regulation requiring automatic adjustment in benefits for classes of recipients.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2260 (November 1999), amended by the Department of Children and Family Services, Division of Programs, Economic Stability, LR 38:

§307. Time Limits for Requesting a Fair Hearing

A.1. When a decision is made on a case, the client is notified and is allowed the following number of days from the date of the notice to request a fair hearing.

FITAP	30 days
STEP Program	30 days
KCSP	30 days
CCAP	30 days
SNAP	90 days

2. The client may appeal at any time during a certification period for a dispute of the current level of benefits.

B. An appeal is timely requested if the appeal request:

1. is delivered on or before the due date; or
2. received via FAX or mailed on or before the due date. If the appeal request is received by mail on the first working day following the due date, there shall be a rebuttable presumption that the appeal was timely filed. In all cases where the presumption does not apply, the timeliness of the mailing shall be shown only by an official United States postmark or by official receipt or certificate from the United States Postal Service made at the time of mailing which indicates the date thereof. For purposes of this Section, "by mail" applies only to the United States Postal Service.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S.36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2260 (November 1999), amended LR 26:350 (February 2000), amended by the Department of Children and Family Services, Division of Programs, Economic Stability, LR 38:

§309. Time Limits for Decisions to be Rendered

A. A prompt, definitive, and final decision must be provided within the number of days from the date of the Fair Hearing request as listed below.

FITAP	90 days
STEP Program	90 days
KCSP	90 days
CCAP	90 days
SNAP	60 days*

*or 90 days for Public Assistance households simultaneously appealing the same issue in Public Assistance and SNAP cases

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:237.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2261 (November 1999), amended LR 26:351 (February 2000), amended by the Department of Children and Family Services, Division of Programs, Economic Stability, LR 38:

§311. Expedited SNAP Hearings

A. The DCFS Appeals Unit and the department must expedite hearing decisions for SNAP households that plan to move from the jurisdiction of the hearing official before the hearing decision would normally be reached. Hearing requests from these households shall be expedited if necessary to enable them to receive a decision before they leave the area.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2261 (November 1999), amended by the Department of Children and Family Services, Division of Programs, Economic Stability, LR 38:

§313. Continuation of Benefits

A. Recipients in all categories, except STEP Program and CCAP, who request a fair hearing prior to the expiration of the advance notice of adverse action or within 13 days of the date of concurrent notice must have benefits continued

at, or reinstated to, the benefit level of the previous month, unless:

1. - 3. ...

B. Benefits will continue at the prior level until the end of the certification period or until the resolution of the hearing, whichever is first. Such benefits are subject to recovery by the department if the action is upheld.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2261 (November 1999), amended by the Department of Children and Family Services, Division of Programs, Economic Stability, LR 38:

§315. Client Rights

A. The claimant or his authorized agent has the right to:

1. department assistance in filing and preparing his request or an explanation of how to file an appeal;

2. - 4. ...

5. review the case record. Upon request and at a reasonable time before the hearing, the claimant and/or his authorized agent must be allowed to review the claimant's case record or any documents to be used by the department at the hearing in the presence of a department representative:

a. - b. ...

6. present his case himself or with the aid of others, including legal representation;

7. request that a subpoena be issued. The DCFS Appeals Unit will evaluate such requests and authorize the department to serve the subpoena if appropriate;

8. request a postponement prior to the hearing. The DCFS Appeals Unit will decide if a postponement is to be granted based upon good cause. Regardless of good cause, requests for rescheduling an initial hearing for a SNAP appeal will be granted;

9. submit evidence and bring witnesses to the hearing. The claimant has the right to advance arguments without undue interference and to question or refute any testimony or evidence, including the right to confront and cross-examine witnesses;

10. request a rescheduled hearing after failing to appear at the hearing. The DCFS Appeals Unit will evaluate the requests to determine if good cause exists.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2261 (November 1999), amended by the Department of Children and Family Services, Division of Programs, Economic Stability, LR 38:

§317. Responsibility of DCFS Appeals Unit When a Fair Hearing is Requested

A. The DCFS Appeals Unit has the sole responsibility for accepting or rejecting all requests for a fair hearing.

B. The DCFS Appeals Unit must acknowledge fair hearing requests made directly to that office by or for a claimant, or requests submitted by the department. All requests must be denied or accepted in writing. The department will receive appropriate notification.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S.36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2262 (November 1999), amended by the Department of Children and Family Services, Division of Programs, Economic Stability, LR 38:

§319. Scheduling

A. The DCFS Appeals Unit will cause to be scheduled all fair hearings. The claimant, his authorized agent, and the department will be notified at least ten days in advance of the time, place, and date of the hearing. Hearings will be scheduled during regular working hours and will normally be set in the department office, unless there are reasons for scheduling in another location.

B. Any hearing which is required or permitted hereunder may be conducted utilizing remote telephonic communications if the record reflects that all parties have consented to conducting the hearing by use of such communications and that such procedure will not jeopardize the rights of any party to the hearing. A face-to-face hearing will be conducted if requested by the appellant.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2262 (November 1999), amended by the Department of Children and Family Services, Division of Programs, Economic Stability, LR 38:

§321. Providing a Summary of Evidence to the Client

A. The DCFS Appeals Unit will provide or will cause to be provided a copy of the summary of evidence to the claimant or to his authorized agent with the notice for scheduling the fair hearing.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2262 (November 1999), amended by the Department of Children and Family Services, Division of Programs, Economic Stability, LR 38:

§323. Withdrawals

A. The claimant may withdraw his request for a fair hearing at any time prior to the hearing. The request for withdrawal may be stated verbally during a department conference held by telephone or in person or submitted in writing to the local office or the DCFS Appeals Unit. The local office must send written notice to the client or the client's representative confirming the withdrawal for verbal withdrawals that are initiated at the local office level during a department conference. The DCFS Appeals Unit must send written notice to the client, the client's representative, and the department confirming the withdrawal for withdrawals that are initiated at the DCFS Appeals Unit and/or at the state office level.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2262 (November 1999), amended by the Department of Children and Family Services, Division of Programs, Economic Stability, LR 38:

§325. Dismissal of a Request for a Fair Hearing

A. A fair hearing request which is accepted by the DCFS Appeals Unit may be disposed of without a hearing and without a decision only when:

1. the request for a fair hearing is withdrawn; or
2. the claimant abandons his request for a hearing. If the claimant or his authorized agent fails to appear for a hearing and has made no contact with the department or the DCFS Appeals Unit, the request for a fair hearing will be considered abandoned. If he later requests to reschedule, the request will be evaluated for good cause;

3. the issue is settled in the claimant's favor by the department.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2262 (November 1999), amended by the Department of Children and Family Services, Division of Programs, Economic Stability, LR 38:

§327. Group Hearings

A. When a department policy or regulation is the sole issue, the DCFS Appeals Unit may schedule or cause to be scheduled a single group hearing to respond to a series of individual requests. Regulations governing individual fair hearings are followed. Each individual claimant must be permitted to present his case or be represented by an authorized agent. If a group hearing is arranged, an individual claimant must be given the right to withdraw from the group hearing in favor of an individual hearing.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2262 (November 1999), amended by the Department of Children and Family Services, Division of Programs, Economic Stability, LR 38:

§329. Attendance

A. Only persons directly concerned are permitted to attend the hearing. The claimant may be accompanied or represented by anyone he believes necessary or desirable to support his claim, including legal counsel if he so desires.

B. Appropriate department representatives and service providers are required to attend the hearing.

C. The administrative law judge has the authority to limit the number of persons in attendance.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2262 (November 1999), amended by the Department of Children and Family Services, Division of Programs, Economic Stability, LR 38:

§331. Hearing Official

A. Hearings shall be conducted by an impartial official(s) who:

1. does not have a personal involvement in the case;
2. was not directly involved in the initial determination of the action which is being contested; and
3. was not the immediate supervisor of the worker who took the action.

B. The hearing official shall be:

1. an individual under contract with the Department of Children and Family Services.

C. The hearing official shall:

1. - 4. ...
5. order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the Department of Children and Family Services;
6. provide a hearing record and recommendation for final decision by the hearing authority; or, if the hearing official is the hearing authority, render a hearing decision in the name of the Department of Children and Family Services which will resolve the dispute.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2262 (November 1999), amended by the Department of Children and Family Services, Division of Programs, Economic Stability, LR 38:

§333. Hearing Authority

A. - B. ...

C. A decision by the hearing authority shall be binding on the Department of Children and Family Services and shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent state or federal regulations. The decision shall become a part of the record. The household shall be notified in writing of the:

1. decision;
2. reasons for the decision;
3. available appeal rights; and
4. right to pursue judicial review of the decision.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2263 (November 1999), amended by the Department of Children and Family Services, Division of Programs, Economic Stability, LR 38:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? This Rule will have no impact on family stability.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? This Rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This Rule will have no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? This Rule will have no effect on family earnings and family budget.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will have no effect on the behavior or personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, these functions are department functions.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have any adverse impact on small businesses. The department, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

All interested persons may submit written comments through, February 28, 2012, to Sammy Guillory, Deputy Assistant Secretary, Division of Programs, Post Office Box 94065, Baton Rouge, LA 70804-9065.

Public Hearing

A public hearing on the proposed Rule will be held on February 28, 2012, at the Department of Children and

Family Services, Iberville Building, 627 N. Fourth Street, Seminar Room 1-127, Baton Rouge, LA, beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the DCFS Appeals Unit at least seven working days in advance of the hearing. For assistance, call area code (225) 342-4120 (voice and TDD).

Ruth Johnson
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Verbal Fair Hearing Withdrawals

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This rule proposes to amend the Louisiana Administrative Code, LAC 67:III, Subpart 1, Chapter 3, and Sections 301-333. The Department of Children and Family Services (DCFS), Appeals Unit is responsible for providing a system of hearing, due process, to every applicant/recipient who believes he/she has been unjustly treated regarding benefits or services in any programs the department administers through a fair hearing. The proposed rule will allow DCFS, Appeals Unit to accept a verbal statement from the household, or its representative, to withdraw a fair hearing request. In addition, this proposed rule will change, correct, and/or delete agency, section, or program names in each section that have been renamed or discontinued.

The only cost associated with this rule is the cost of publishing rulemaking, which is estimated to be \$2,800. This is a one-time cost that is routinely included in the department's annual operating budget.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of the proposed rule will have no effect on revenue collections of state or local government units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Implementation of the proposed rule will have no effect on economic benefits to affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule should have no impact on competition and employment.

Sammy Guillory
Deputy Assistant Secretary
1201#075

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Children and Family Services Division of Programs Licensing Section

Criminal Record Check, Sex Offender Prohibitions,
and State Central Registry Disclosure
(LAC 67:V. 6703, 6708, 6710, 6955,
6957, 6959, 6961, 7105, 7107, 7111)

The Department of Children and Family Services (DCFS), Division of Programs, Licensing Section in accordance with provisions of the Administrative Procedure Act, R.S.

49:953(A) proposes to amend LAC 67:V, Subpart 8, Chapter 67 Maternity Home, Chapter 69 Child Residential Care, concerning Class “B” regulations, and Chapter 71 Child Residential Care, concerning Class “A” regulations.

Amendments are being made to Subpart 8, Sections 6703, 6955, 6957, 6959, 6961, 7105, 7107, and 7111. Sections 6708 and 6710 are being added to Chapter 67 to address state central registry and criminal background check requirements for staff and potential employees of maternity homes. The amendments shall include regulations that require state central registry disclosure of any individual that has a justified (valid) determination of child abuse or neglect as specified in R.S. 46:1414.1 and require providers to make an influenza notice available to parents as specified in R.S. 46:1414. Pursuant to R.S. 14:81.4(A), (B)(2) and (4), R.S.14:81.4 (E)(1), 91.1(A)(2), 91.2(B), (C), and (D), R.S. 14:91.2(E), 91.3, and 91.4 amendments shall be added to prohibit any person that has been convicted of a sex offense as defined in R.S. 15:541 from owning, operating, or participating in the governance of a child residential facility or maternity home, prohibit any employer from knowingly employing a person convicted of a sex offense as defined in R.S. 15:541 to work in a child residential facility or maternity home, and require any owner/owners of a child residential facility or maternity home to provide documentation of a satisfactory criminal record check as required by R.S. 15:587.1.

This Rule was made active by an Emergency Rule effective November 2, 2011.

Title 67
SOCIAL SERVICES
Part V. Child Welfare
Subpart 8. Residential Licensing
Chapter 67. Maternity Home
§6703. Definition

- A. ...
- B. Additional Definitions
 - 1. Definitions, as used in this Chapter:

* * *

Department (DCFS)—Department of Children and Family Services formerly the Department of Social Services.

* * *

Individual Owner—a natural person who directly owns a facility without setting up or registering a corporation, LLC, partnership, church, university or governmental entity. The spouse of a married owner is also an owner unless the business is the separate property of the licensee acquired before his/her marriage, acquired through authentic act of sale from spouse of his/her undivided interest; or acquired via a judicial termination of the community of aquets and gains.

* * *

License—any license issued by the department to operate any child care facility or child-placing agency as defined in R.S. 46:1403; or any license issued by the Department of Health and Hospitals to operate any facility providing services under Title XIX or XX of the Social Security Act; or any license issued by the Department of Health and Hospitals (or formerly issued by the Department of Social Services) to operate any adult residential care facility.

Licensing Section—DCFS, Division of Programs, Licensing Section.

Mandated Reporter—professionals who may work with children in the course of their professional duties and who consequently are required to report all suspected cases of child abuse and neglect. This includes any person who provides training and supervision of a child, such as a public or private school teacher, teacher’s aide, instructional aide, school principal, school staff member, social worker, probation officer, foster home parent, group home or other child care institution staff member, personnel of maternity home facilities, a licensed or unlicensed day care provider, any individual who provides such services to a child, or any other person made a mandatory reporter under Article 603 of the Children’s Code or other applicable law.

Owner or Operator—the individual who exercises ownership or control over a child care facility, whether such ownership/control is direct or indirect.

Ownership—the right that confers on a person direct, immediate, and exclusive authority over a thing. The owner of a thing may use, enjoy, and dispose of it within the limits and under the conditions established by law. Refers to direct or indirect ownership.

i. *Direct Ownership*—when a natural person is the immediate owner of a child care facility, i.e., exercising control personally rather than through a juridical person.

ii. *Indirect Ownership*—when the immediate owner is a juridical entity.

* * *

Reasonable Suspicion—suspicion based on specific and articulable facts which indicate that an owner, operator, or current or potential employee or volunteer has been investigated and determined to be the perpetrator of abuse or neglect against a minor resulting in a justified and/or valid finding currently recorded on the state central registry.

Staff—all full or part-time paid or unpaid staff who perform services for the maternity home and have direct or indirect contact with children at the facility. Facility staff includes the director and any other employees of the facility including, but not limited to the cook, housekeeper, driver, custodian, secretary, and bookkeeper.

State Central Registry—repository that identifies any individual reported to have a justified (valid) finding of abuse or neglect of a child or children by DCFS.

* * *

B.2. - B.2.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2694 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1570 (August 2009), amended LR 36:799, 835 (April 2010), repromulgated LR 36:1275 (June 2010), amended by the Department of Children and Family Services, Child Welfare Section, LR 36:2521 (November 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§6708. General Provisions

A. Conditions for Participation in a Child-Related Business

1. Any owner/owners of a maternity home shall provide documentation of a satisfactory criminal record check, as required by R.S. 46:51.2 and 15:587.1. A copy of the criminal background check shall be submitted for each owner of a facility with an initial application, a change of ownership (CHOW) application, a change of location (CHOL) application, and/or an application for renewal for maternity home license. No person with a criminal conviction of a felony, or a plea of guilty or nolo contendere of a felony, or plea of guilty or nolo contendere to any offense included in 15:587.1, or any offense involving a juvenile victim, shall directly or indirectly own, operate, or participate in the governance of a maternity home. In addition, an owner, or director shall not have a conviction of, or plea of guilty or nolo contendere to any crime in which an act of fraud or intent to defraud is an element of the offense. The following is a listing of individuals by organizational type who are required to submit documentation of a satisfactory criminal background clearance:

- a. individual ownership—individual and spouse;
- b. partnership—all limited or general partners and managers as verified on the Secretary of State's website;
- c. church owned, governmental entity, or university owned—any clergy and/or board member that is present in the facility during the hours of operation or when children are present;
- d.i. corporation—any individual who has 25 percent or greater share in the business or any individual with less than a 25 percent share in the business and performs one or more of the following functions:
 - (a). has unsupervised access to the children in care at the facility;
 - (b). is present in the facility during hours of operation;
 - (c). makes decisions regarding the day-to-day operations of the facility;
 - (d). hires and/or fires maternity home staff including the director;
 - (e). oversees maternity home staff and/or conducts personnel evaluations of the maternity home staff; and/or
 - (f). writes the facility's policies and procedures.
- ii. If an owner has less than a 25 percent share in the business and does not perform one or more of the functions listed above a signed, notarized attestation form is required in lieu of a criminal background clearance. This attestation form is a signed statement from each owner acknowledging that he/she has less than a 25 percent share in the business and that he/she does not perform one or more of the aforementioned functions as an owner.

2. Providers and child care staff shall not permit an individual convicted of a sex offense as defined in R.S. 15:541 to have physical access to a maternity home as defined in R.S. 46:1403.

3. The owner or director of a maternity home shall be required to call and notify law enforcement personnel and the Licensing Section management staff if they have knowledge that a registered sex offender is on the premises

of the maternity home. The verbal report shall be followed by a written report to the Licensing Section within 24 hours. The owner or director of a maternity home shall be required to call and notify law enforcement personnel if they have knowledge that a registered sex offender is within 1,000 feet of the maternity home as required by R.S. 14:91.1.

B. State Central Registry

1. All owners shall complete, sign, and date the state central registry disclosure form (SCR 1) as required by R.S. 46:1414.1. This information shall be reported prior to the individual being on the premises of the maternity home and shall be updated annually, at any time upon the request of DCFS, and within three business days of any owner receiving notice of a justified (valid) determination of child abuse or neglect.

a. Prospective owners shall complete, sign, and date the state central registry disclosure form and submit the disclosure form to DCFS licensing. If a prospective owner discloses that his or her name is currently recorded as a perpetrator on the state central registry, DCFS shall not proceed with the licensure process. The owner shall request a risk evaluation assessment on the risk evaluation panel form (SCR 2) or shall submit a signed, dated statement that he or she will not be on the premises of the facility at any time. DCFS will resume the licensure process when the owner provides written documentation from the Risk Evaluation Panel or the Division of Administrative Law noting that they do not pose a risk to children or the statement regarding their presence at the maternity home.

b. Within three business days of current owners receiving notice of a justified (valid) determination of child abuse and/or neglect, an updated state central registry disclosure form (SCR 1) shall be completed by the owner as required by R.S. 46:1414.1 and submitted to the Licensing section management staff. The owner will have 10 calendar days from completion of the state central registry disclosure form to request a risk assessment evaluation in accordance with LAC 67:1.305. If on-site at the facility and immediately upon the knowledge that a justified (valid) finding has been issued by DCFS, the owner shall be directly supervised by a paid staff (employee) of the facility, who has not disclosed that their name appears with a justified (valid) finding on the state central registry. Under no circumstances may the owner with the justified finding be left alone and unsupervised with the children pending the disposition of the Risk Evaluation Panel or the Division of Administrative Law. If not on site at the maternity home, owner shall submit a signed, dated statement that he or she will not be on the premises of the facility at any time.

i. If the Risk Evaluation Panel finds the owner does pose a risk to children and the individual chooses not to appeal the finding, the owner shall not be on the maternity home premises at any time.

ii. If the Risk Evaluation Panel finds the owner does pose a risk to children and the individual appeals the finding to the Division of Administrative Law within the required timeframe, the owner shall continue to be under direct supervision at all times by a paid staff (employee) of the facility who has not disclosed that they have a justified finding on the state central registry until a ruling is made by the Division of Administrative Law that they do not pose a risk to children. Supervision may end upon receipt of the

ruling from the Division of Administrative Law that the owner does not pose a risk to children.

iii. If the Division of Administrative Law upholds the Risk Evaluation Panel finding that the individual does pose a risk to children, the owner shall not be on the maternity home premises at any time.

2. State central registry disclosure forms, documentation of any disposition of the Risk Evaluation Panel and, when applicable, the Division of Administrative Law ruling shall be maintained in accordance with current DCFS licensing requirements and shall be available for review by DCFS personnel during the facility's hours of operation. This information shall be kept on file for a minimum of one year from termination of the employee or volunteer from the facility.

3. Any information received or knowledge acquired that a current or prospective owner, operator, volunteer, employee, prospective volunteer, or prospective employee has falsified a state central registry disclosure form stating that they are not currently recorded as a perpetrator with a justified (valid) determination of abuse or neglect shall be reported in writing to Licensing Section Management Staff as soon as possible, but no later than the close of business on the next business day.

4. Any state central registry disclosure form, Risk Evaluation Panel finding, and Division of Administrative Law ruling that is maintained in a maternity home facility licensing file shall be confidential and subject to the confidentiality provisions of R.S. 46:56(F) pertaining to the investigations of abuse and neglect.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§6710. Personnel Files

A. Prior to employment, each prospective employee/volunteer shall complete a state central registry disclosure form prepared by the department as required in R.S. 46:1414.1. This information shall be reported prior to the individual being on the premises of the maternity home and shall be updated annually, at any time upon the request of DCFS, and within three business days of any staff receiving notice of a justified (valid) determination of child abuse or neglect.

1. The prospective paid staff (employee/volunteer) shall complete, sign, and date the state central registry disclosure form and submit the disclosure form to the owner or operator of the facility.

a. If a prospective staff (employee/volunteer) discloses that his or her name is currently recorded as a perpetrator on the state central registry, the director shall inform the applicant they will not be considered for employment at that time due to the state central registry disclosure. The director will provide the prospective employee/volunteer with the risk evaluation panel form (SCR 2) so that a risk assessment evaluation may be requested.

b. Individuals are not eligible for employment unless and until they provide written documentation from the Risk Evaluation Panel or the Division of Administrative Law expressly stating that they do not pose a risk to children.

2. Current staff receiving notice of a justified (valid) determination of child abuse and/or neglect shall complete an updated state central registry disclosure form (SCR 1) noting the existence of the justified (valid) determination as required by R.S. 46:1414.1. This updated SCR 1 shall be submitted to the licensing section management staff within three business days or upon being on the maternity home premises, whichever is sooner. Staff will have 10 calendar days from completion of the state central registry disclosure form to request a risk assessment evaluation in accordance with LAC 67:I.305 or shall be terminated immediately.

a. If the staff person will no longer be employed at the facility, the provider shall submit a signed, dated statement indicating that the staff will not be on the premises of the facility at any time.

b. Immediately upon the receipt of the knowledge that a justified (valid) finding has been issued by DCFS and as a condition of continued employment the staff person shall be directly supervised by a paid staff (employee/volunteer) of the facility who has not disclosed that their name appears with a justified (valid) finding on the state central registry. Provider shall submit a written statement to licensing section management staff acknowledging that the staff is under continuous direct supervision by a paid staff who has not disclosed that their name appears with a justified (valid) finding on the state central registry. When these conditions are met, the staff (employee/volunteer) may be counted in child staff ratio. Under no circumstances may the staff person with the justified finding be left alone and unsupervised with the children pending the disposition by the Risk Evaluation Panel or the Division of Administrative Law that the staff person does not pose a risk to children.

c. If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual chooses not to appeal the finding, the staff (employee/volunteer) shall be terminated immediately.

d. If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual appeals the finding to the Division of Administrative Law within the required timeframe, the staff (employee/volunteer) shall continue to be under direct supervision at all times by another paid employee/volunteer of the facility who has not disclosed that they have a justified finding on the state central registry until a ruling is made by the Division of Administrative Law that they do not pose a risk to children. Supervision may end upon receipt of the ruling from the Division of Administrative Law that they do not pose a risk to children.

e. If the Division of Administrative Law upholds the Risk Evaluation Panel finding that the individual does pose a risk to children, the individual shall be terminated immediately.

3. Any owner, operator, current or prospective employee/volunteer, or volunteer of a maternity home requesting licensure by DCFS and/or a maternity home licensed by DCFS is prohibited from working in a maternity home if the individual discloses, or information is known or received by DCFS, that the individual's name is recorded on the state central registry (SCR) as a perpetrator for a justified (valid) finding of abuse or neglect of a child, unless there is a finding by the Risk Evaluation Panel or a ruling by the

Division of Administrative Law that the individual does not pose a risk to children.

4. No person, having any supervisory or other interaction with residents, shall be hired or on the premises of the facility until such person has submitted his or her fingerprints to the Louisiana Bureau of Criminal Identification and Information and it has been determined that such person has not been convicted of or pled nolo contendere to a crime listed in R.S. 15:587.1(C). This shall include any employee/volunteer or non-employee who performs paid or unpaid work with the provider to include independent contractors, consultants, students, volunteers, trainees, or any other associated person, as defined in these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

Chapter 69. Child Residential Care

§6955. Procedures

A. - A.2.e.v. ...

vi. a completed licensure inspection verifying compliance with these standards;

vii. full license fee paid; and

viii. any owner/owners of a residential facility shall provide documentation of a satisfactory criminal record check, as required by R.S. 46:51.2 and 15:587.1.

A.3. - B.3.b. ...

C. Renewal of the License

1. A license shall be renewed on an annual basis. The month of issue of the initial license becomes the anniversary month for all renewals. A license shall expire on the last day of the anniversary month unless prior to that time the provider has made timely application for renewal as provided in Subparagraph C.2 below.

2. The provider shall submit, at least 60 days prior to its license expiration date, a completed renewal application form and applicable fee. Failure to submit a completed renewal form, applicable fee, and any of the documentation listed below within the time frame set forth herein shall cause the license to expire on its anniversary date. Once a license has expired, a provider may submit an application for an initial license in the manner prescribed in these regulations. The following documentation shall be submitted with the renewal application form:

a. Office of Fire Marshal approval for occupancy;

b. Office of Public Health, Sanitarian Services approval;

c. city fire department approval, if applicable;

d. copy of proof of current general liability and property insurance for facility;

e. copy of proof of insurance for vehicle(s); and

f. copy of a satisfactory criminal record check as required by R.S. 46:51.2 and 15:587.1 for any owner/owners.

3. Prior to renewing the CRF license, an on-site survey shall be conducted to assure compliance with all licensing laws and standards. If the CRF is found to be in compliance with the licensing laws and standards, and any other required statutes, laws, ordinances, or regulations, the license shall be renewed for a 12-month period.

4. In the event the annual licensing survey finds the CRF is non-compliant with any licensing laws or standards, or any other required statutes, ordinances or regulations but the department, in its sole discretion, determines that the noncompliance does not present a threat to the health, safety, or welfare of the participants, the provider shall be required to submit a corrective action plan to the department for approval. The department shall specify the timeline for submitting the corrective action plan based on such non-compliance or deficiencies cited but no later than 10 days from the date of notification. The corrective action plan shall include a description of how the deficiency shall be corrected and the date by which correction(s) shall be completed. Failure to submit an approved corrective action plan timely, or submission of a corrective action plan deemed by the department to be insufficient to adequately address the deficiencies in a timely and effective manner, shall be grounds for non-renewal.

5. If it is determined that such noncompliance or deficiencies have not been corrected prior to the expiration of the license, the department at its sole discretion, may issue an extension of the license for a period not to exceed 60 days.

6. When it is determined by the department that such noncompliance or deficiencies have been corrected, a license may be issued for a period not to exceed 12 months.

7. If it is determined that all areas of noncompliance or deficiencies have not been corrected prior to the expiration date of the extension, the department may revoke the license.

D. - D.2.e. ...

f. the facility is closed with no plans for reopening and no means of verifying compliance with minimum standards for licensure;

g. any act of fraud such as falsifying or altering documents required for licensure;

h. permit an individual with a justified (valid) finding of child/abuse neglect to be on the premises without being directly supervised by another paid employee of the facility, who has not disclosed that their name appears with a justified (valid) finding on the state central registry prior to a determination by the Risk Evaluation Panel or Division of Administrative Law that the individual does not pose a risk to children; or to knowingly permit an individual who has not disclosed that their name appears with a justified (valid) finding on the state central registry to be on the premises at any time, whether supervised or not supervised;

i. permit an individual, whether supervised or not supervised to be on the child residential premises with a ruling by the Risk Evaluation Panel that the individual poses a risk to children and the individual has not requested an appeal hearing by the or nolo contendere to, any offense included in 15:587.1, or any offense involving a juvenile victim;

j. have a criminal background, as evidenced by the employment or ownership or continued employment or ownership of or by any individual (paid or unpaid staff) who has been convicted of, or pled guilty or nolo contendere to, any offense included in 15:587.1, or to any offense involving a juvenile victim;

k. own a child residential business and have been convicted of or have pled guilty or nolo contender to any

crime in which an act of fraud or intent to defraud is an element of the offense;

l. have knowledge that a convicted sex offender is on the premises of the child care facility and fail to notify law enforcement and licensing management staff immediately upon receipt of such knowledge; or

m. have knowledge that a convicted sex offender is physically present within 1,000 feet of the child care facility and fail to notify law enforcement immediately upon receipt of such knowledge.

E. - F.1.d. ...

G. Disqualification from Application

1. Definitions, as used in Section 6955.G:

Department—Repealed.

Facility—Repealed.

License—any license issued by the department to operate any child care facility or child-placing agency as defined in R.S. 46:1403; or any license issued by the Department of Health and Hospitals to operate any facility providing services under Title XIX or XX of the Social Security Act; or any license issued by the Department of Health and Hospitals (or formerly issued by the Department of Social Services) to operate any adult residential care facility.

G.2. - G.2.d. ...

H. - H.2.d. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1410 et seq., R.S.46:1401-1424 and R.S. 46:1414.1.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 27:1565 (September 2001), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2740 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1617 (August 2009), amended LR 36:331 (February 2010), LR 36:836, 842 (April 2010), repromulgated LR 36:1032 (May 2010), repromulgated LR 36:1277 (June 2010), amended by the Department of Children and Family Services, Child Welfare Section, LR 36:1463 (July 2010), amended by the Department of Children and Family Services, Child Welfare Section and Economic Stability and Self-Sufficiency Section, LR 36:2522 (November 2010), repromulgated LR 36:2838 (December 2010), amended by the Department of Children and family Services, Division of Programs, Licensing Section, LR 38:

§6957. Definitions

Department (DCFS)—Department of Children and Family Services formerly the Department of Social Services.

Documentation—written evidence or proof, signed and dated by the parties involved (director, parents, staff, etc.), and available for review.

Facility—any place, program, institution, or agency operating a child care facility or child-placing agency as defined in R.S. 46:1403, including those owned or operated by governmental, private, or religious organization or entity.

Individual Owner—a natural person who directly owns a facility without setting up or registering a corporation, LLC, partnership, church, university or governmental entity. The spouse of a married owner is also an owner unless the business is the separate property of the licensee acquired before his/her marriage, acquired through authentic act of sale from spouse of his/her undivided interest; or acquired via a judicial termination of the community of aquets and gains.

Licensing Section—DCFS, Division of Programs, Licensing Section.

Mandated Reporter—professionals who may work with children in the course of their professional duties and who consequently are required to report all suspected cases of child abuse and neglect. This includes any person who provides training and supervision of a child, such as a public or private school teacher, teacher’s aide, instructional aide, school principal, school staff member, social worker, probation officer, foster home parent, group home or other child care institution staff member, personnel of residential home facilities, a licensed or unlicensed day care provider, any individual who provides such services to a child, or any other person made a mandatory reporter under Article 603 of the Children’s Code or other applicable law.

Owner or Operator—the individual who exercises ownership or control over a child care facility, whether such ownership/control is direct or indirect.

Ownership—the right that confers on a person direct, immediate, and exclusive authority over a thing. The owner of a thing may use, enjoy, and dispose of it within the limits and under the conditions established by law. Refers to direct or indirect ownership.

1. *Direct Ownership*—when a natural person is the immediate owner of a child care facility, i.e., exercising control personally rather than through a juridical person.

2. *Indirect Ownership*—when the immediate owner is a juridical entity.

Reasonable Suspicion—suspicion based on specific and articulable facts which indicate that an owner, operator, or current or potential employee or volunteer has been investigated and determined to be the perpetrator of abuse or neglect against a minor resulting in a justified and/or valid finding currently recorded on the state central registry.

Safety Interventions—an immediate time limited plan to control the factor(s) that may result in an immediate or impending serious injury/harm to a child(ren).

Staff—all full or part-time paid or unpaid staff who perform services for the child residential facility and have direct or indirect contact with children at the facility. Facility staff includes the director and any other employees of the facility including, but not limited to the cook, housekeeper, driver, custodian, secretary, and bookkeeper excluding extra-curricular personnel.

State Central Registry—repository that identifies any individual reported to have a justified (valid) finding of abuse or neglect of a child or children by DCFS.

* * *

Unlicensed Operation—operation of any child residential facility, at any location, without a valid, current license issued by the department for that location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1410 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 27:1567 (September 2001), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2742 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1619 (August 2009), amended by the Department of Children and Family Services, Division of Program, Licensing Sections, LR 38:

§6959. Administration and Organization

A. - B.2. ...

3. Any owner/owners of a child residential facility shall provide documentation of a satisfactory criminal record check, as required by R.S. 46:51.2 and 15:587.1. A copy of the criminal background check shall be submitted for each owner of a facility with an initial application, a change of ownership (CHOW) application, a change of location (CHOL) application, and/or an application for renewal for a child residential license. No person with a criminal conviction for, or a plea of guilty or nolo contendere to, any offense included in 15:587.1, or any offense involving a juvenile victim, shall directly or indirectly own, operate, or participate in the governance of a child residential facility. In addition, an owner, or director shall not have a conviction of, or plea of guilty or nolo contendere to any crime in which an act of fraud or intent to defraud is an element of the offense. The following is a listing of individuals by organizational type who are required to submit documentation of a satisfactory criminal background clearance:

- a. individual ownership—individual and spouse;
- b. partnership—all limited or general partners and managers as verified on the Secretary of State's website;
- c. church owned, governmental entity, or university owned—any clergy and/or board member that is present in the facility during the hours of operation or when children are present;
- d.i. corporation—any individual who has 25 percent or greater share in the business or any individual with less than a 25 percent share in the business and performs one or more of the following functions:
 - (a). has unsupervised access to the children in care at the facility;
 - (b). is present in the facility during hours of operation;
 - (c). makes decisions regarding the day-to-day operations of the facility;
 - (d). hires and/or fires child care staff including the director;
 - (e). oversees child residential staff and/or conducts personnel evaluations of the child care staff; and/or
 - (f). writes the facility's policies and procedures.
- ii. If an owner has less than a 25 percent share in the business and does not perform one or more of the

functions listed above a signed, notarized attestation form is required in lieu of a criminal background clearance. This attestation form is a signed statement from each owner acknowledging that he/she has less than a 25 percent share in the business and that he/she does not perform one or more of the aforementioned functions as an owner.

4. Providers and child care staff shall not permit an individual convicted of a sex offense as defined in R.S. 15:541 to have physical access to a child residential facility as defined in R.S. 46:1403.

5. The owner or director of a child residential facility shall be required to call and notify law enforcement personnel and the Licensing Section management staff if they have knowledge that a registered sex offender is on the premises of the child residential facility. The verbal report shall be followed by a written report to the Licensing Section within 24 hours. The owner or director of a child residential facility shall be required to call and notify law enforcement personnel if they have knowledge that a registered sex offender is within 1,000 feet of the child day care facility as required by R.S. 14:91.1.

6. All owners shall complete, sign, and date the state central registry disclosure form (SCR 1) as required by R.S. 46:1414.1. This information shall be reported prior to the individual being on the premises of the child residential facility and shall be updated annually, at any time upon the request of DCFS, and within three business days of any owner receiving notice of a justified (valid) determination of child abuse or neglect.

a. Prospective owners shall complete, sign, and date the state central registry disclosure form and submit the disclosure form to DCFS licensing. If a prospective owner discloses that his or her name is currently recorded as a perpetrator on the state central registry, DCFS shall not proceed with the licensure process. The owner shall request a risk evaluation assessment on the risk evaluation panel form (SCR 2) or shall submit a signed, dated statement that he or she will not be on the premises of the facility at any time. DCFS will resume the licensure process when the owner provides written documentation from the Risk Evaluation Panel or the Division of Administrative Law noting that they do not pose a risk to children or the statement regarding their presence at the child residential facility.

b. Within three business days of current owners receiving notice of a justified (valid) determination of child abuse and/or neglect, an updated state central registry disclosure form (SCR 1) shall be completed by the owner as required by R.S. 46:1414.1. and submitted to the Licensing section management staff. The owner will have 10 calendar days from completion of the state central registry disclosure form to request a risk assessment evaluation in accordance with LAC 67:I.305. If on-site at the facility and immediately upon the knowledge that a justified (valid) finding has been issued by DCFS, the owner shall be directly supervised by a paid staff (employee) of the facility, who has not disclosed that their name appears with a justified (valid) finding on the state central registry. Under no circumstances may the owner with the justified finding be left alone and unsupervised with the children pending the disposition of the Risk Evaluation Panel or the Division of Administrative Law. If not on site at the child residential facility, owner shall submit a signed,

dated statement that he or she will not be on the premises of the facility at any time.

i. If the Risk Evaluation Panel finds the owner does pose a risk to children and the individual chooses not to appeal the finding, the owner shall not be on the child residential premises at any time.

ii. If the Risk Evaluation Panel finds the owner does pose a risk to children and the individual appeals the finding to the Division of Administrative Law within the required timeframe, the owner shall continue to be under direct supervision at all times by a paid staff (employee) of the facility who has not disclosed that they have a justified finding on the state central registry until a ruling is made by the Division of Administrative Law that they do not pose a risk to children. Supervision may end upon receipt of the ruling from the Division of Administrative Law that the owner does not pose a risk to children.

iii. If the Division of Administrative Law upholds the Risk Evaluation Panel finding that the individual does pose a risk to children, the owner shall not be on the child residential premises at any time.

7. State central registry disclosure forms, documentation of any disposition of the Risk Evaluation Panel and, when applicable, the Division of Administrative Law ruling shall be maintained in accordance with current DCFS licensing requirements and shall be available for review by DCFS personnel during the facility's hours of operation. This information shall be kept on file for a minimum of one year from termination of the employee or volunteer from the facility.

8. Any information received or knowledge acquired that a current or prospective owner, operator, volunteer, employee, prospective volunteer, or prospective employee has falsified a state central registry disclosure form stating that they are not currently recorded as a perpetrator with a justified (valid) determination of abuse or neglect shall be reported in writing to Licensing Section Management Staff as soon as possible, but no later than the close of business on the next business day.

9. Any state central registry disclosure form, Risk Evaluation Panel finding, and Division of Administrative Law ruling that is maintained in a child residential facility licensing file shall be confidential and subject to the confidentiality provisions of R.S. 46:56(F) pertaining to the investigations of abuse and neglect.

10. In accordance with R.S. 46:1428 providers shall make available to each child's parent or legal guardian information relative to the risks associated with influenza and the availability, effectiveness, known contraindications and possible side effects of the influenza immunization. This information shall include the causes and symptoms of influenza, the means by which influenza is spread, the places a parent or legal guardian may obtain additional information and where a child may be immunized against influenza. The information shall be updated annually if new information on the disease is available. The information shall be provided annually to each licensed facility by the Department of Children and Family Services and shall be made available to parents or legal guardians prior to November 1 of each year.

C. - O.1.c. ...

d. documentation of a satisfactory criminal record check from Louisiana State Police as required by R.S.

46:51.2. This check shall be obtained prior to the individual being present in the child residential facility. No person who has been convicted of, or pled guilty or nolo contendere to, any offense included in R.S. 15:587.1, or any offense involving a juvenile victim, shall be eligible to own, operate, and/or be present in any capacity in any licensed child residential facility. For any owner or operator, a clear criminal background check in accordance with R.S. 46:51.2 shall be obtained prior to the issuance of a license or approval of a change of ownership. In addition, neither an owner, nor a director shall have a conviction of, or pled guilty or nolo contendere to any crime in which an act of fraud or intent to defraud is an element of the offense.

i. Any employee who is convicted of or has pled nolo contendere to any crime listed in R.S. 15:587.1(c) shall not continue employment after such conviction or nolo contendere plea.

e. evidence of applicable professional credentials/certifications according to state law;

f. annual performance evaluations;

g. personnel actions, other appropriate materials, reports and notes relating to the individual's employment with the facility;

h. employee's starting and termination dates.

i. Prior to employment, each prospective employee shall complete a state central registry disclosure form prepared by the department as required in RS 46:1414.1. This information shall be reported prior to the individual being on the premises of the child residential facility and shall be updated annually, at any time upon the request of DCFS, and within three business days of any staff receiving notice of a justified (valid) determination of child abuse or neglect.

i. The prospective paid staff (employee) shall complete, sign, and date the state central registry disclosure form and submit the disclosure form to the owner or operator of the facility.

(a). If a prospective staff (employee) discloses that his or her name is currently recorded as a perpetrator on the state central registry, the director shall inform the applicant they will not be considered for employment at that time due to the state central registry disclosure. The director will provide the prospective employee with the risk evaluation panel form (SCR 2) so that a risk assessment evaluation may be requested.

(b). Individuals are not eligible for employment unless and until they provide written documentation from the Risk Evaluation Panel or the Division of Administrative Law expressly stating that they do not pose a risk to children.

ii. Current staff receiving notice of a justified (valid) determination of child abuse and/or neglect shall complete an updated state central registry disclosure form (SCR 1) noting the existence of the justified (valid) determination as required by R.S. 46:1414.1. This updated SCR 1 shall be submitted to the licensing section management staff within three business days or upon being on the child residential premises, whichever is sooner. Staff will have 10 calendar days from completion of the state central registry disclosure form to request a risk assessment evaluation in accordance with LAC 67:1.305 or shall be terminated immediately.

(a). If the staff person will no longer be employed at the facility, the provider shall submit a signed, dated statement indicating that the staff will not be on the premises of the facility at any time.

(b). Immediately upon the receipt of the knowledge that a justified (valid) finding has been issued by DCFS and as a condition of continued employment the staff person shall be directly supervised by a paid staff (employee) of the facility who has not disclosed that their name appears with a justified (valid) finding on the state central registry. Provider shall submit a written statement to licensing section management staff acknowledging that the staff is under continuous direct supervision by a paid staff who has not disclosed that their name appears with a justified (valid) finding on the state central registry. When these conditions are met, the staff (employee) may be counted in child staff ratio. Under no circumstances may the staff person with the justified finding be left alone and unsupervised with the children pending the disposition by the Risk Evaluation Panel or the Division of Administrative Law that the staff person does not pose a risk to children.

(c). If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual chooses not to appeal the finding, the staff (employee) shall be terminated immediately.

(d). If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual appeals the finding to the Division of Administrative Law within the required timeframe, the staff (employee) shall continue to be under direct supervision at all times by another paid employee of the facility who has not disclosed that they have a justified finding on the state central registry until a ruling is made by the Division of Administrative Law that they do not pose a risk to children. Supervision may end upon receipt of the ruling from the Division of Administrative Law that they do not pose a risk to children.

(e). If the Division of Administrative Law upholds the Risk Evaluation Panel finding that the individual does pose a risk to children, the individual shall be terminated immediately.

iii. Any owner, operator, current or prospective employee, or volunteer of a child residential facility requesting licensure by DCFS and/or a child residential facility licensed by DCFS is prohibited from working in a child residential facility if the individual discloses, or information is known or received by DCFS, that the individual's name is recorded on the state central registry (SCR) as a perpetrator for a justified (valid) finding of abuse or neglect of a child, unless there is a finding by the Risk Evaluation Panel or a ruling by the Division of Administrative Law that the individual does not pose a risk to children.

O.2. - Q. ...

R. Facility, Staff, Client and Records Accessibility

1. The provider shall allow representatives of DCFS access to the facility, the children, and all files and records at any time during hours of operation and/or anytime a child is present. DCFS staff shall be allowed to interview any staff member or child as determined necessary by DCFS. DCFS representatives shall be admitted immediately and without delay, and shall be given free access to all areas of a facility, including its grounds. If any portion of a facility is set aside

for private use by the facility's owner, DCFS representatives shall be permitted to verify that no child is present in that portion and that the private areas are inaccessible to children. If as a result of a preliminary investigation, or other DCFS inspection, DCFS determines that one or more safety issues exists, DCFS may require implementation of a safety intervention plan. In such a case, the provider shall cooperate and adhere to any written safety intervention as determined, enumerated, and mandated by DCFS staff.

AUTHORITY NOTE: Promulgated in accordance with R.S.

36:477 and R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 27:1567 (September 2001), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2743 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1620 (August 2009), amended LR 36:331 (February 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§6961. Human Resources

A. - E.2. ...

3. subject to character and reference checks similar to those performed for employment applicants upon obtaining a signed release and the names of the references from the potential volunteer/intern student;

4. aware of and briefed on any special needs or problems of clients;

5. have a criminal background check as required in R.S. 15:587.1 and R.S. 46:51.2 and as outlined in Section 6959.O.1.d; and

6. have a completed state central registry disclosure form prepared by the department whether or not his/her name is currently recorded on the state central registry for a justified finding of abuse or neglect and he/she is the named perpetrator as required in R.S. 46.1414.1.

a. This information shall be reported prior to the individual being on the premises of the child residential facility and shall be updated annually, at any time upon the request of DCFS, and within three business days of any staff and/or volunteer receiving notice of a justified (valid) determination of child abuse or neglect.

b. The prospective non-paid staff (volunteer) shall complete, sign, and date the state central registry disclosure form and submit the disclosure form to the owner or operator of the facility.

i. If a prospective staff non-paid (volunteer) discloses that his or her name is currently recorded as a perpetrator on the state central registry, the director shall inform the applicant they will not be considered for volunteer duties at that time due to the state central registry disclosure. The director will provide the prospective volunteer with the risk evaluation panel form (SCR 2) so that a risk assessment evaluation may be requested.

ii. Individuals are eligible for volunteer services if and when they provide written documentation from the Risk Evaluation Panel or the Division of Administrative Law noting that they do not pose a risk to children.

c. Current volunteers receiving notice of a justified (valid) determination of child abuse and/or neglect shall complete an updated state central registry disclosure form (SCR 1) noting the existence of the justified (valid) determination as required by R.S. 46:1414.1. This updated

SCR 1 shall be submitted to the licensing section management staff within three business days or upon being on the child residential premises, whichever is sooner. Volunteers will have 10 calendar days from completion of the state central registry disclosure form to request a risk assessment evaluation in accordance with LAC 67:1.305 or shall be terminated immediately.

i. If the volunteer will no longer be employed at or provide volunteer services at the facility, the provider shall submit a signed, dated statement indicating that the volunteer will not be on the premises of the facility at any time.

ii. Immediately upon the receipt of the knowledge that a justified (valid) finding has been issued by DCFS and as a condition of continued volunteer services, the staff person shall be directly supervised by a paid staff (employee) of the facility who has not disclosed that their name appears with a justified (valid) finding on the state central registry. Provider shall submit a written statement to licensing section management staff acknowledging that the volunteer is under continuous direct supervision by a paid staff who has not disclosed that their name appears with a justified (valid) finding on the state central registry. When these conditions are met, the non-paid staff (volunteer) may be counted in child staff ratio. Under no circumstances may the volunteer with the justified finding be left alone and unsupervised with the children pending the disposition by the Risk Evaluation Panel or the Division of Administrative Law that the staff person does not pose a risk to children.

iii. If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual chooses not to appeal the finding, the non-paid staff (volunteer) shall be terminated immediately.

iv. If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual appeals the finding to the Division of Administrative Law within the required timeframe, the non-paid staff (volunteer) shall continue to be under direct supervision at all times by another paid employee of the facility who has not disclosed that they have a justified finding on the state central registry until a ruling is made by the Division of Administrative Law that they do not pose a risk to children. Supervision may end upon receipt of the ruling from the Division of Administrative Law that they do not pose a risk to children.

v. If the Division of Administrative Law upholds the Risk Evaluation Panel finding that the individual does pose a risk to children, the individual shall be terminated immediately.

d. Any owner, operator, current or prospective employee, or volunteer of a child residential facility requesting licensure by DCFS and/or a child residential facility licensed by DCFS is prohibited from working in a child residential facility if the individual discloses, or information is known or received by DCFS, that the individual's name is recorded on the state central registry (SCR) as a perpetrator for a justified (valid) finding of abuse or neglect of a child, unless there is a finding by the Risk Evaluation Panel or a ruling by the Division of Administrative Law that the individual does not pose a risk to children.

F. - F.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1410 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 27:1570 (September 2001), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2745 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1622 (August 2009), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

Chapter 71. Child Residential Care

§7105. Definitions

A. As used in this Chapter:

Department (DCFS)—Department of Children and Family Services formerly the Department of Social Services.

Documentation—written evidence or proof, signed and dated by the parties involved (director, parents, staff, etc.), and available for review.

Facility—any place, program, institution, or agency operating a child care facility or child-placing agency as defined in R.S. 46:1403, including those owned or operated by governmental, private, or religious organization or entity.

Individual Owner—a natural person who directly owns a facility without setting up or registering a corporation, LLC, partnership, church, university or governmental entity. The spouse of a married owner is also an owner unless the business is the separate property of the licensee acquired before his/her marriage, acquired through authentic act of sale from spouse of his/her undivided interest; or acquired via a judicial termination of the community of acquets and gains.

License—any license issued by the department to operate any child care facility or child-placing agency as defined in R.S. 46:1403; or any license issued by the Department of Health and Hospitals to operate any facility providing services under Title XIX or XX of the Social Security Act; or any license issued by the Department of Health and Hospitals (or formerly issued by the Department of Social Services) to operate any adult residential care facility.

Licensing Section—DCFS, Division of Programs, Licensing Section.

Mandated Reporter—professionals who may work with children in the course of their professional duties and who consequently are required to report all suspected cases of child abuse and neglect. This includes any person who provides training and supervision of a child, such as a public or private school teacher, teacher's aide, instructional aide, school principal, school staff member, social worker, probation officer, foster home parent, group home or other child care institution staff member, personnel of residential home facilities, a licensed or unlicensed day care provider, any individual who provides such services to a child, or any other person made a mandatory reporter under Article 603 of the Children's Code or other applicable law.

Medication—all drugs administered internally and/or externally, whether over-the-counter or prescribed.

Owner or Operator—the individual who exercises ownership or control over a child residential care facility, whether such ownership/control is direct or indirect.

Ownership—the right that confers on a person direct, immediate, and exclusive authority over a thing. The owner of a thing may use, enjoy, and dispose of it within the limits and under the conditions established by law. Refers to direct or indirect ownership.

a. *Direct Ownership* - when a natural person is the immediate owner of a child residential care facility, i.e., exercising control personally rather than through a juridical person.

b. *Indirect Ownership* - when the immediate owner is a juridical entity.

* * *

Reasonable Suspicion—suspicion based on specific and articulable facts which indicate that an owner, operator, or current or potential employee or volunteer has been investigated and determined to be the perpetrator of abuse or neglect against a minor resulting in a justified and/or valid finding currently recorded on the state central registry.

* * *

Safety Interventions—an immediate time limited plan to control the factor(s) that may result in an immediate or impending serious injury/harm to a child(ren).

* * *

Staff—all full or part-time paid or unpaid staff who perform services for the child residential facility and have direct or indirect contact with children at the facility. Facility staff includes the director and any other employees of the facility including, but not limited to the cook, housekeeper, driver, custodian, secretary, and bookkeeper excluding extra-curricular personnel.

State Central Registry—repository that identifies any individual reported to have a justified (valid) finding of abuse or neglect of a child or children by DCFS.

* * *

Unlicensed Operation—operation of any child residential facility, at any location, without a valid, current license issued by the department for that location.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Service, LR 36:805 (April 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§7107. Licensing Requirements

A. - A.4. ...

5. Any owner/owners of a child residential facility shall provide documentation of a satisfactory criminal record check, as required by R.S. 46:51.2 and 15:587.1. A copy of the criminal background check shall be submitted for each owner of a facility with an initial application, a change of ownership (CHOW) application, a change of location (CHOL) application, and/or an application for renewal for a child residential license. No person with a criminal conviction for, or a plea of guilty or nolo contendere to, any offense included in 15:587.1, or any offense involving a juvenile victim, shall directly or indirectly own, operate, or participate in the governance of a child residential facility. In addition, an owner, or director shall not have a conviction of,

or plea of guilty or nolo contendere to any crime in which an act of fraud or intent to defraud is an element of the offense. The following is a listing of individuals by organizational type who are required to submit documentation of a satisfactory criminal background clearance:

a. individual ownership—individual and spouse;

b. partnership—all limited or general partners and managers as verified on the Secretary of State's website;

c. church owned, governmental entity, or university owned—any clergy and/or board member that is present in the facility during the hours of operation or when children are present;

d. corporation—any individual who has 25 percent or greater share in the business or any individual with less than a 25 percent share in the business and performs one or more of the following functions:

i. has unsupervised access to the children in care at the facility;

ii. is present in the facility during hours of operation;

iii. makes decisions regarding the day-to-day operations of the facility;

iv. hires and/or fires child care staff including the director;

v. oversees child residential staff and/or conducts personnel evaluations of the child care staff; and/or

vi. writes the facility's policies and procedures.

vii. If an owner has less than a 25 percent share in the business and does not perform one or more of the functions listed above a signed, notarized attestation form is required in lieu of a criminal background clearance. This attestation form is a signed statement from each owner acknowledging that he/she has less than a 25 percent share in the business and that he/she does not perform one or more of the aforementioned functions as an owner.

6. Providers and child care staff shall not permit an individual convicted of a sex offense as defined in R.S. 15:541 to have physical access to a child residential facility as defined in R.S. 46:1403.

7. The owner or director of a child residential facility shall be required to call and notify law enforcement personnel and the Licensing Section management staff if they have knowledge that a registered sex offender is on the premises of the child residential facility. The verbal report shall be followed by a written report to the Licensing Section within 24 hours. The owner or director of a child residential facility shall be required to call and notify law enforcement personnel if they have knowledge that a registered sex offender is within 1,000 feet of the child day care facility as required by R.S. 14:91.1.

B. - B.1.q. ...

r. a floor sketch or drawing of the premises to be licensed;

s. any other documentation or information required by the department for licensure; and

t. any owner/owners of a child residential facility shall provide documentation of a satisfactory criminal record check, as required by R.S. 46:51.2 and 15:587.1.

B.2. - E.2.c. ...

d. copy of proof of current general liability and property insurance for facility;

e. copy of proof of insurance for vehicle(s); and

f. copy of a criminal background clearance for all owners as required by R.S. 46:51.2 and 15:587.1.

E.3. - E.6. ...

7. If it is determined that all areas of noncompliance or deficiencies have not been corrected prior to the expiration date of the extension, the department may revoke the license.

F. - G.2.e. ...

f. failure to timely submit an application for renewal or to timely pay required fees;

g. operating any unlicensed facility and/or program;

h. permit an individual with a justified (valid) finding of child/abuse neglect to be on the premises without being directly supervised by another paid employee of the facility, who has not disclosed that their name appears with a justified (valid) finding on the state central registry prior to a determination by the Risk Evaluation Panel or Division of Administrative Law that the individual does not pose a risk to children; or to knowingly permit an individual who has not disclosed that their name appears with a justified (valid) finding on the state central registry to be on the premises at any time, whether supervised or not supervised;

i. permit an individual, whether supervised or not supervised to be on the child residential premises with a ruling by the Risk Evaluation Panel that the individual poses a risk to children and the individual has not requested an appeal hearing by the or nolo contendere to, any offense included in 15:587.1, 14:2, 15:541, or any offense involving a juvenile victim;

j. have a criminal background, as evidenced by the employment or ownership or continued employment or ownership of or by any individual (paid or unpaid staff) who has been convicted of, or pled guilty or nolo contendere to, any offense included in 15:587.1, or to any offense involving a juvenile victim;

k. own a child residential business and have been convicted of or have pled guilty or nolo contender to any crime in which an act of fraud or intent to defraud is an element of the offense;

l. have knowledge that a convicted sex offender is on the premises of the child care facility and fail to notify law enforcement and licensing management staff immediately upon receipt of such knowledge; or

m. have knowledge that a convicted sex offender is physically present within 1,000 feet of the child care facility and fail to notify law enforcement immediately upon receipt of such knowledge.

G.3. - K.1.d. ...

L. State Central Registry

1. All owners shall complete, sign, and date the state central registry disclosure form (SCR 1) as required by R.S. 46:1414.1. This information shall be reported prior to the individual being on the premises of the child residential facility and shall be updated annually, at any time upon the request of DCFS, and within three business days of any owner receiving notice of a justified (valid) determination of child abuse or neglect.

a. Prospective owners shall complete, sign, and date the state central registry disclosure form and submit the disclosure form to DCFS licensing. If a prospective owner discloses that his or her name is currently recorded as a perpetrator on the state central registry, DCFS shall not

proceed with the licensure process. The owner shall request a risk evaluation assessment on the risk evaluation panel form (SCR 2) or shall submit a signed, dated statement that he or she will not be on the premises of the facility at any time. DCFS will resume the licensure process when the owner provides written documentation from the Risk Evaluation Panel or the Division of Administrative Law noting that they do not pose a risk to children or the statement regarding their presence at the child residential facility.

b. Within three business days of current owners receiving notice of a justified (valid) determination of child abuse and/or neglect, an updated state central registry disclosure form (SCR 1) shall be completed by the owner as required by R.S. 46:1414.1 and submitted to the Licensing section management staff. The owner will have 10 calendar days from completion of the state central registry disclosure form to request a risk assessment evaluation in accordance with LAC 67:I.305. If on-site at the facility and immediately upon the knowledge that a justified (valid) finding has been issued by DCFS, the owner shall be directly supervised by a paid staff (employee) of the facility, who has not disclosed that their name appears with a justified (valid) finding on the state central registry. Under no circumstances may the owner with the justified finding be left alone and unsupervised with the children pending the disposition of the Risk Evaluation Panel or the Division of Administrative Law. If not on site at the child residential facility, owner shall submit a signed, dated statement that he or she will not be on the premises of the facility at any time.

i. If the Risk Evaluation Panel finds the owner does pose a risk to children and the individual chooses not to appeal the finding, the owner shall not be on the child residential premises at any time.

ii. If the Risk Evaluation Panel finds the owner does pose a risk to children and the individual appeals the finding to the Division of Administrative Law within the required timeframe, the owner shall continue to be under direct supervision at all times by a paid staff (employee) of the facility who has not disclosed that they have a justified finding on the state central registry until a ruling is made by the Division of Administrative Law that they do not pose a risk to children. Supervision may end upon receipt of the ruling from the Division of Administrative Law that the owner does not pose a risk to children.

iii. If the Division of Administrative Law upholds the Risk Evaluation Panel finding that the individual does pose a risk to children, the owner shall not be on the child residential premises at any time.

2. State central registry disclosure forms, documentation of any disposition of the Risk Evaluation Panel and, when applicable, the Division of Administrative Law ruling shall be maintained in accordance with current DCFS licensing requirements and shall be available for review by DCFS personnel during the facility's hours of operation. This information shall be kept on file for a minimum of one year from termination of the employee or volunteer from the facility.

3. Any information received or knowledge acquired that a current or prospective owner, operator, volunteer, employee, prospective volunteer, or prospective employee has falsified a state central registry disclosure form stating

that they are not currently recorded as a perpetrator with a justified (valid) determination of abuse or neglect shall be reported in writing to Licensing Section Management Staff as soon as possible, but no later than the close of business on the next business day.

4. Any state central registry disclosure form, Risk Evaluation Panel finding, and Division of Administrative Law ruling that is maintained in a child residential facility licensing file shall be confidential and subject to the confidentiality provisions of R.S. 46:56(F) pertaining to the investigations of abuse and neglect.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S.46:1401-1424 and R.S. 46:1414.1.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 36:807 (April 2010), amended LR 36:843 (April 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§7111. Provider Responsibilities

A. - A.2.c. ...

d. The provider that utilizes volunteers shall be responsible for the actions of the volunteers. Volunteers shall be given a copy of their job description. Volunteers shall:

i. ...

ii. have a criminal background check as required in R.S. 15:587.1 and R.S. 46:51.2 and as outlined in Section 7111.A.5.d.ii; and

iii. have a completed state central registry disclosure form prepared by the department whether or not his/her name is currently recorded on the state central registry for a justified finding of abuse or neglect and he/she is the named perpetrator as required in R.S. 46.1414.1;

(a). This information shall be reported prior to the individual being on the premises of the child residential facility and shall be updated annually, at any time upon the request of DCFS, and within three business days of any staff and/or volunteer receiving notice of a justified (valid) determination of child abuse or neglect.

(b). The prospective non-paid staff (volunteer) shall complete, sign, and date the state central registry disclosure form and submit the disclosure form to the owner or operator of the facility.

(i). If a prospective staff non-paid (volunteer) discloses that his or her name is currently recorded as a perpetrator on the state central registry, the director shall inform the applicant they will not be considered for volunteer duties at that time due to the state central registry disclosure. The director will provide the prospective volunteer with the risk evaluation panel form (SCR 2) so that a risk assessment evaluation may be requested.

(ii). Individuals are eligible for volunteer services if and when they provide written documentation from the Risk Evaluation Panel or the Division of Administrative Law noting that they do not pose a risk to children.

(c). Current volunteers receiving notice of a justified (valid) determination of child abuse and/or neglect shall complete an updated state central registry disclosure form (SCR 1) noting the existence of the justified (valid) determination as required by R.S. 46:1414.1. This updated SCR 1 shall be submitted to the licensing section management staff within three business days or upon being

on the child residential premises, whichever is sooner. Volunteers will have ten calendar days from completion of the state central registry disclosure form to request a risk assessment evaluation in accordance with LAC 67:1.305 or shall be terminated immediately.

(i). If the volunteer will no longer be employed at or provide volunteer services at the facility, the provider shall submit a signed, dated statement indicating that the volunteer will not be on the premises of the facility at any time.

(ii). Immediately upon the receipt of the knowledge that a justified (valid) finding has been issued by DCFS and as a condition of continued volunteer services, the staff person shall be directly supervised by a paid staff (employee) of the facility who has not disclosed that their name appears with a justified (valid) finding on the state central registry. Provider shall submit a written statement to licensing section management staff acknowledging that the volunteer is under continuous direct supervision by a paid staff who has not disclosed that their name appears with a justified (valid) finding on the state central registry. When these conditions are met, the non-paid staff (volunteer) may be counted in child staff ratio. Under no circumstances may the volunteer with the justified finding be left alone and unsupervised with the children pending the disposition by the Risk Evaluation Panel or the Division of Administrative Law that the staff person does not pose a risk to children.

(iii). If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual chooses not to appeal the finding, the non-paid staff (volunteer) shall be terminated immediately.

(iv). If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual appeals the finding to the Division of Administrative Law within the required timeframe, the non-paid staff (volunteer) shall continue to be under direct supervision at all times by another paid employee of the facility who has not disclosed that they have a justified finding on the state central registry until a ruling is made by the Division of Administrative Law that they do not pose a risk to children. Supervision may end upon receipt of the ruling from the Division of Administrative Law that they do not pose a risk to children.

(v). If the Division of Administrative Law upholds the Risk Evaluation Panel finding that the individual does pose a risk to children, the individual shall be terminated immediately.

(d). Any owner, operator, current or prospective employee, or volunteer of a child residential facility requesting licensure by DCFS and/or a child residential facility licensed by DCFS is prohibited from working in a child residential facility if the individual discloses, or information is known or received by DCFS, that the individual's name is recorded on the state central registry (SCR) as a perpetrator for a justified (valid) finding of abuse or neglect of a child, unless there is a finding by the Risk Evaluation Panel or a ruling by the Division of Administrative Law that the individual does not pose a risk to children.

A.2.d.iv. - A.5.b. ...

c. Prior to employment, each prospective employee shall complete a state central registry disclosure form prepared by the department as required in RS 46:1414.1.

This information shall be reported prior to the individual being on the premises of the child residential facility and shall be updated annually, at any time upon the request of DCFS, and within three business days of any staff receiving notice of a justified (valid) determination of child abuse or neglect.

i. The prospective paid staff (employee) shall complete, sign, and date the state central registry disclosure form and submit the disclosure form to the owner or operator of the facility.

(a). If a prospective staff (employee) discloses that his or her name is currently recorded as a perpetrator on the state central registry, the director shall inform the applicant they will not be considered for employment at that time due to the state central registry disclosure. The director will provide the prospective employee with the risk evaluation panel form (SCR 2) so that a risk assessment evaluation may be requested.

(b). Individuals are not eligible for employment unless and until they provide written documentation from the Risk Evaluation Panel or the Division of Administrative Law expressly stating that they do not pose a risk to children.

ii. Current staff receiving notice of a justified (valid) determination of child abuse and/or neglect shall complete an updated state central registry disclosure form (SCR 1) noting the existence of the justified (valid) determination as required by R.S. 46:1414.1. This updated SCR 1 shall be submitted to the licensing section management staff within three business days or upon being on the child residential premises, whichever is sooner. Staff will have ten calendar days from completion of the state central registry disclosure form to request a risk assessment evaluation in accordance with LAC 67:1.305 or shall be terminated immediately.

(a). If the staff person will no longer be employed at the facility, the provider shall submit a signed, dated statement indicating that the staff will not be on the premises of the facility at any time.

(b). Immediately upon the receipt of the knowledge that a justified (valid) finding has been issued by DCFS and as a condition of continued employment the staff person shall be directly supervised by a paid staff (employee) of the facility who has not disclosed that their name appears with a justified (valid) finding on the state central registry. Provider shall submit a written statement to licensing section management staff acknowledging that the staff is under continuous direct supervision by a paid staff who has not disclosed that their name appears with a justified (valid) finding on the state central registry. When these conditions are met, the staff (employee) may be counted in child staff ratio. Under no circumstances may the staff person with the justified finding be left alone and unsupervised with the children pending the disposition by the Risk Evaluation Panel or the Division of Administrative Law that the staff person does not pose a risk to children.

(c). If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual chooses not to appeal the finding, the staff (employee) shall be terminated immediately.

(d). If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual

appeals the finding to the Division of Administrative Law within the required timeframe, the staff (employee) shall continue to be under direct supervision at all times by another paid employee of the facility who has not disclosed that they have a justified finding on the state central registry until a ruling is made by the Division of Administrative Law that they do not pose a risk to children. Supervision may end upon receipt of the ruling from the Division of Administrative Law that they do not pose a risk to children.

(e). If the Division of Administrative Law upholds the Risk Evaluation Panel finding that the individual does pose a risk to children, the individual shall be terminated immediately.

iii. Any owner, operator, current or prospective employee, or volunteer of a child residential facility requesting licensure by DCFS and/or a child residential facility licensed by DCFS is prohibited from working in a child residential facility if the individual discloses, or information is known or received by DCFS, that the individual's name is recorded on the state central registry (SCR) as a perpetrator for a justified (valid) finding of abuse or neglect of a child, unless there is a finding by the Risk Evaluation Panel or a ruling by the Division of Administrative Law that the individual does not pose a risk to children.

d. - d.i. ...

ii. No person, having any supervisory or other interaction with residents, shall be hired or on the premises of the facility until such person has submitted his or her fingerprints to the Louisiana Bureau of Criminal Identification and Information and it has been determined that such person has not been convicted of or pled nolo contendere to a crime listed in R.S. 15:587.1(C). This shall include any employee or non-employee who performs paid or unpaid work with the provider to include independent contractors, consultants, students, volunteers, trainees, or any other associated person, as defined in these rules.

A.5.d.iii. - G ...

H. Influenza Notice to Parents

1. In accordance with R.S. 46:1428 providers shall make available to each child's parent or legal guardian information relative to the risks associated with influenza and the availability, effectiveness, known contraindications and possible side effects of the influenza immunization. This information shall include the causes and symptoms of influenza, the means by which influenza is spread, the places a parent or legal guardian may obtain additional information and where a child may be immunized against influenza. The information shall be updated annually if new information on the disease is available. The information shall be provided annually to each licensed facility by the Department of Children and Family Services and shall be made available to parents or legal guardians prior to November 1 of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Service, LR 36:811 (April 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? There will be no effect on the stability of the family.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? This Rule will help to ensure that the individuals that own, operate, or govern child care facilities and those that are responsible for the education and supervision of children in child care facilities, have satisfactory criminal background clearances and have not been convicted of a sex offense as defined in R.S. 15:541.

3. What effect will this have on the functioning of the family? There will be no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? There will be no effect on family earnings and the family budget.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will have no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this is strictly an agency function.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

All interested persons may submit written comments through February 28, 2012, to Sammy Guillory, Deputy Assistant Secretary, Department of Children and Family Services, Division of Programs, Post Office Box 94065, Baton Rouge, LA, 70821-9065.

Public Hearing

A public hearing on the proposed Rule will be held on February 28, 2012 at the Department of Children and Family Services, Iberville Building, 627 N. Fourth Street, Seminar Room 1-129, Baton Rouge, LA, beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the DCFS Appeals Bureau at least seven working days in advance of the hearing. For assistance, call Area Code 225-342-4120 (Voice and TDD).

Ruth Johnson
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Criminal Record Check, Sex Offender Prohibitions, and State Central Registry Disclosure

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This rule proposes to amend the Louisiana Administrative Code (LAC) 67:V, Subpart 8, Chapter 67 Maternity Home,

Chapter 69 Child Residential Care, concerning Class "B" regulations, and Chapter 71 Child Residential Care, concerning Class "A" regulations. In order to protect the health, safety and welfare of children while in maternity homes and child residential facilities licensed by the Department of Children and Family Services (DCFS), the proposed rule amendments (1) require state central registry disclosure of any individual that has a justified (valid) determination of child abuse or neglect; (2) require providers to make an influenza notice available to parents; (3) prohibit any person that has been convicted of a sex offense as defined in R.S. 15:541 from owning, operating, or participating in the governance of a child residential facility or maternity home; (4) prohibit any employer from knowingly employing a person convicted of a sex offense as defined in R.S. 15:541 to work in a child residential facility or maternity home; and (5) require any owner/owners of a child residential facility or maternity home to provide documentation of a satisfactory criminal record check.

DCFS shall develop an informational document regarding this proposed rule and post it to the DCFS website. In addition, information regarding this proposed rule will be made available, at a negligible cost to the department, by notice through the mail to approximately 52 child residential facilities and maternity homes. The mailing will notify owner/owners of child residential facilities and maternity homes that information concerning this proposed rule is posted on the DCFS web site. The notices will be mailed at an estimated one-time cost of \$33 (\$16.50 State and \$16.50 Federal), which includes printing (\$5), supplies (\$3), and postage (\$25). Mailing costs are routinely included in the department's annual operating budget and will be absorbed within the FY 12 budget appropriation. In subsequent fiscal years, information regarding this proposed rule to newly licensed child residential facilities and maternity homes will be provided in the licensing regulations manual available on the department's website at no cost.

The only other cost associated with this proposed rule is the cost of publishing rulemaking, which is estimated to be approximately \$16,600. This is a one-time cost that is routinely included in the department's annual operating budget. Therefore, the total cost to implement this proposed rule changes for FY 11-12 is \$16,633 (\$33 for mailings and \$16,600 for rulemaking).

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of this proposed rule will have no effect on state or local government revenue collection.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule may result in an economic impact for current and potential future owner/owners of a child residential facility or maternity home as a result the cost to obtain a the required criminal background clearance in order to own, operate, or participate in the governance of a maternity home or child residential facility. However, the department cannot determine the exact costs due to unknown number of individual owners that this rule will impact and the unknown cost of criminal record check.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule prohibits any person that has been convicted of a sex offense as defined by R.S. 15:541 from owning, operating, or in any way participating in the governance of a maternity home or child residential facility and also prohibits any employer of the facility from knowingly employing such individuals. Therefore, individuals determined to pose a risk to children will not be considered for employment or may be terminated if currently employed.

However the department cannot determine the number of individuals or child residential facilities or maternity homes this rule will impact.

Sammy Guillory
Deputy Assistant Secretary
1201#076

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Children and Family Services Division of Programs Licensing Section

Service Delivery Model Monitoring and Review Guidelines
(LAC 67:V.7107, 7111, 7113, 7115, 7117, 7119, and 7313)

In accordance with provisions of the Administrative Procedure Act R.S. 49:953(A), the Department of Children and Family Services (DCFS), Division of Programs, Licensing Section proposes to amend LAC 67: V, Subpart 8, Chapter 71, Child Residential Care and Chapter 73, Child Placing Agencies. Regulations in these chapters shall be amended to comply with Executive Order Number BJ 2011-5 which establishes a service delivery model to provide effective community based services through the creation of partnerships with public and private providers of services that target children, youth and their families, in a multi-agency, multi-disciplinary system of services.

DCFS proposes to amend Chapter 71, Sections 7107, 7111, 7113, 7115, 7117, and 7119 and Chapter 73, Section 7313. The existing regulations shall be amended to clarify guidelines for child residential facility and child placing agency providers to review and monitor the service delivery model for the treatment of children and youth with significant behavioral health challenges or co-occurring disorders.

Title 67

SOCIAL SERVICES

Part V. Child Welfare

Subpart 8. Residential Licensing

Chapter 71. Child Residential Care

§7107. Licensing Requirements

A. - I.1.a. ...

b. The program director or owner may appeal this decision by submitting a written request with the reasons to the Secretary, Department of Children and Family Services, Bureau of Appeals, P.O. Box 2994, Baton Rouge, LA 70821-9118. This written request shall be postmarked within 15 days of the receipt of the notification in §7107.H.1 above.

I.1.c. - J.6. ...

K. Posting of Notices of Revocation

1. The notice of revocation of the license shall be prominently posted.

a. The Department of Children and Family Services shall prominently post a notice of revocation action at each public entrance of the child residential care facility within one business day of such action. This notice must remain visible to the general public, other placing agencies, parents, guardians, and other interested parties of children who attend the child care facility.

b. - d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S.46:1401-1424 and R.S. 46:1414.1.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 36:807 (April 2010), amended LR 36:843 (April 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§7111. Provider Responsibilities

A. - A.3.a.iii. ...

b. Service Plan Manager—the service plan manager shall have a bachelor's degree in a human service field plus a minimum of one year with the relevant population.

3.c. - 4.b.iii. ...

iv. reviewing quarterly service plan reviews for the successes and failures of the resident's program, including the resident's educational program, with recommendations for any modifications deemed necessary. Designated staff may prepare these reports, but the service plan manager shall also review the reports;

v. ...

vi. monitoring that the resident receives a periodic review and review of the need for residential placement and ensuring the timely release, whenever appropriate, of the resident to a least restrictive setting; monitoring any extraordinary restriction of the resident's freedom including use of any form of restraint, any special restriction on a resident's communication with others and any behavior management plan;

vii. - viii.(c). ...

(d). help the family to develop constructive and personally meaningful ways to support the resident's experience in the facility, through assistance with challenges associated with changes in family structure and functioning, and referral to specific services, as appropriate;

(e). - (f). ...

(g). monitor that all residents receive timely evaluations for specialized services and timely receipt of those specialized services identified.

A.4.c. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Service, LR 36:811 (April 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§7113. Admission and Discharge

A. - A.2.a.ii.(i). ...

3. Admission Assessment

a. An admission assessment shall be completed or obtained within three business days of admission to determine the service needs and preferences of the resident. This assessment shall be maintained in the resident's record. Information gathered from this assessment shall be used to develop a service plan for the resident. Information gathered during the pre-screening assessment that is applicable can be used for the admission assessment and shall include the following:

i. - vi. ...

b. Within 30 days of admission, the provider shall evaluate or obtain the following information:

A.3.b.i. - B.1.d. ...

2. Within 30 days of admission, the provider shall have documentation that a resident has an individual service plan developed that will be comprehensive, time limited,

goal oriented and address the needs of the resident. The service plan shall include the following components:

a. - l. ...

3. The service plan shall be developed by a team including, but not limited to, the following:

B.3.a. - C.2. ...

3. When a resident is discharged, the provider shall compile or obtain a complete written discharge summary within 30 days of discharge. The discharge summary is to be kept in the resident's record and shall include:

a. - f. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community service, LR 36:818 (April 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§7115. Resident Protection

A. - C.2.h. ...

3. The provider shall obtain or develop, with the participation of the resident and his/her legal guardian or family, an individualized behavior support plan for each resident receiving service. Information gathered from the pre-admission assessment and the admission assessment will be used to develop the plan. The plan shall include, at a minimum, the following:

C.3.a. - E.4.b. ...

5. The specific maximum duration of the use of personal restraints as noted in Section 7115.E.4 may be exceeded only if prior to the end of the time period, a written continuation order noting clinical justification is obtained from a licensed psychiatrist, psychologist, or physician. The maximum time for use of personal restraints shall be 12 hours.

E.6. - F.3.b. ...

4. The specific maximum duration of the use of seclusion as noted in Section 7115.F.3 may be exceeded only if prior to the end of the time period, a written continuation order noting clinical justification is obtained from a licensed psychiatrist, psychologist, or physician. The maximum time for use of seclusion shall be 12 hours.

F.5. - G.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community service, LR 36:818 (April 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§7117. Provider Services

A. - C.4.b. ...

5. Condiments appropriate for the ordered diet will be available.

C.6. - D.5.k. ...

6. Professional and Specialized Services

a. The provider shall monitor that residents receive specialized services to meet their needs; these services shall include but are not limited to:

i. - vi. ...

b. The provider shall monitor that all providers of professional and special services:

i. - v. ...

c. The provider shall monitor that any provider of professional or special services (internal or external to the facility) meets the criteria noted below:

D.c.i. - F.10.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community service, LR 36:818 (April 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§7119. Physical Environment

A. - B.4. ...

C. Dining Areas

1. The provider shall have dining areas that permit residents, staff and guests to eat together and create a homelike environment.

C.2. - H. ...

I. Administrative and Discussion Space

1. ...

2. The provider shall have a designated space to allow private discussions between individual residents and staff.

H.3. - N.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community service, LR 36:818 (April 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

Chapter 73. Child Placing Agencies – General Provisions

§7313. Foster Care Services

A. - B.5.f. ...

g. The foster home parent(s) shall complete a minimum of 20 hours of annual training.

i. 10 hours of the 20 of on-going training per year may be met by professional therapeutic consultation or medical training aimed to assist in parenting a child placed or being placed with verification provided by the consultant or trainer.

ii. For two-parent specialized homes, the total training hours may be combined to satisfy the total required hours, as long as the primary caretaker receives 12 of the total required hours and the other parent receives eight of the total required hours.

B.6. - B.6.f. ...

g. The foster home parent(s) shall complete a minimum of 24 hours of annual training.

i. 14 hours of the 24 of on-going training per year may be met by professional therapeutic consultation or medical training aimed to assist in parenting a child placed or being placed.

ii. For two-parent therapeutic foster care homes, the total training hours may be combined to satisfy the total minimum required hours, as long as the primary caretaker receives 16 of the total required hours and the other parent receives eight of the total required hours.

B.6.h. - C.2.b.ix. ...

3. Service Plan

a. The provider shall:

i. within 30 days of a child's placement, develop or obtain:

3.a.i.(a). - 5.b.vii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and ACT 64 of the 2010 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:833 (March 2011), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? There will be no effect on the stability of the family.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? Amendments to Child Residential and Child Placing regulations shall clarify guidelines for the monitoring and review of the service delivery model for the treatment of children and youth with significant behavioral health challenges or co-occurring disorders. The service delivery model shall provide effective community based services through the creation of partnerships with public and private providers of services that target children, youth and their families in a multi-agency, multi-disciplinary system of services.

3. What effect will this have on the functioning of the family? There will be no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? There will be no effect on family earnings and the family budget.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will have no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this is strictly an agency function.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

All interested persons may submit written comments through February 27, 2012, to Sammy Guillory, Deputy Assistant Secretary, Department of Children and Family Services, Division of Programs, Post Office Box 94065, Baton Rouge, LA, 70821-9065.

Public Hearing

A public hearing on the proposed Rule will be held on February 27, 2012 at the Department of Children and Family Services, Iberville Building, 627 N. Fourth Street, Seminar Room 1-127, Baton Rouge, LA, beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the DCFS Appeals Bureau at least

seven working days in advance of the hearing. For assistance, call area code (225) 342-4120 (voice and TDD).

Ruth Johnson
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Service Delivery Model Monitoring and Review Guidelines

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This rule proposes to amend the Louisiana Administrative Code (LAC) 67, Part V, Subpart 8, Residential Licensing, Chapter 71, Child Residential Care and Chapter 73, Child Placing Agencies to comply with Executive Order No. BJ 2011-5 (Coordinated System of Care Governance Board), which establishes a service delivery model to provide effective community based services through the creation of partnerships with public and private providers of services that target children, youth and their families, in a multi-agency, multi-disciplinary system of services.

In this proposed rule, the Department of Children and Family Services (DCFS) clarifies existing regulations that provide guidelines for child residential facilities and child placing agency providers to review and monitor the service delivery model for the treatment of children and youth with significant behavioral health challenges or co-occurring disorders.

DCFS shall develop an informational document regarding this proposed rule and post it to the DCFS website. In addition, information regarding this proposed rule will be made available, at a negligible cost to the department, by notice through the mail to approximately 93 child residential facilities and child placing agencies. The mailing will notify child residential facilities and child placing agency providers that information concerning this proposed rule is posted on the DCFS web site. The notices will be mailed at an estimated one-time cost of approximately \$60 (\$30 State and \$30 Federal), which includes printing (\$8), supplies (\$7), and postage (\$45). In subsequent fiscal years, information regarding this proposed rule will be made available on the department's website at no cost.

The only other cost associated with this proposed rule is the cost of publishing rulemaking, which is estimated to be approximately \$1,640. This is a one-time cot that is routinely included in the department's annual operating budget. Therefore, the total cost to implement this proposed rule changes for FY 11-12 is \$1,700 (\$60 for mailings and \$1,640 for rulemaking).

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This proposed rule will not have an effect on the revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule will not result in any costs to the clients or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition and employment.

Sammy Guillory
Deputy Assistant Secretary
1201#074

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 126—Charter Schools
(LAC 28:CXXXIX.Chapters 1, 5-19, 27, and 39)

Editor's Note: This Notice of Intent is being repromulgated in its entirety to correct a submission error. The original Notice of Intent can be viewed in the December 20, 2011 edition of the *Louisiana Register* on pages 3570-3574.

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 126—Charter Schools: Chapters 1, 5-19, 27, and 39*. The proposed Rules will ensure the greater effectiveness of charter schools throughout the state. Additionally, during the 2011 Regular Legislative Session, several charter school bills were passed into law. The laws allowed for authorizers to grant extended or shortened opening timelines for approved charters, remove requirements regarding the months a school may open, corporate partnerships with charter schools, the allowance of residential charter schools, and for applications to be revised and resubmitted as part of the application process.

Title 28 EDUCATION

Part CXXXIX. Bulletin 126—Charter Schools

Chapter 1. General Provisions

§103. Definitions

A. - F. ...

G. *Management Organization*—a for-profit company that manages academic, fiscal, and operational services on behalf of boards of directors of BESE-authorized charter schools through contractual agreements.

H. - Q. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3973.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1357 (July 2008), amended LR 37:867 (March 2011), LR 37:2383 (August 2011), LR 38:

Chapter 5. Charter School Application and Approval Process

§512. Application Process for Locally Authorized Charter Schools

A. - A.2. ...

3. Prior to the consideration of a charter school proposal by any local school board, each charter applicant shall be afforded the opportunity to revise and resubmit the proposal based on the independent evaluation of the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, R.S. 17:3981, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 37:869 (March 2011), amended LR 38:

§513. Stages of Application Cycle for BESE-Authorized Charter Schools

A. - G. ...

H. Prior to the consideration of a charter school proposal by BESE, each charter applicant shall be afforded the

opportunity to revise and resubmit the proposal based on the independent evaluation of the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1361 (July 2008), amended LR 37:869 (March 2011), LR 38:

§515. Charter School Application Components

A. - D.48. ...

49. a description of any proposed corporate partnerships as specified in Chapter 39 of this bulletin.

E. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1362 (July 2008), amended LR 37:869 (March 2011), LR 37:2383 (August 2011), LR 38:

§517. Consideration of Charter Applications and Awarding of Charters by BESE

A. ...

B. BESE shall consider each Type 5 charter school application that is recommended by the State Superintendent of Education, based on a recommendation by the Office of Parental Options and the recovery school district, and may vote to approve or deny the recommended application.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1363 (July 2008), amended LR 37:870 (March 2011), LR 38:

Chapter 7. Charter School Performance Contract

§701. Charter School Contract with BESE

A. ...

B. The charter school contract shall define the performance standards to which the charter school will be held accountable and the general terms and conditions under which the charter school will operate. The charter school contract template shall include, but not be limited to, provisions regarding the establishment of the charter school; the operation of the charter school; charter school financial matters; charter school personnel; charter term, renewal and revocation; and other provisions determined necessary by BESE. The charter school contract shall also include exhibits that provide detailed information about the terms and conditions under which the school will operate, including but not limited to, the pre-opening requirements; student discipline policy; student enrollment; and management organization contract.

C. ...

D. Any contracts entered into between a charter operator and a management organization shall:

1. set forth material terms including but not limited to: performance evaluation measures; methods of contract oversight and enforcement by the charter school board; compensation structure and all fees to be paid to the management organization; and conditions for contract renewal and termination;

2. contain provisions relative to the submission of documents, including but not limited to student records and financial information, upon request and in a timely manner. The contract shall specify that any documents not provided by a management organization to the charter operator must

be reported by the charter operator to the department. If such documents are financial documents, the department shall notify BESE and the Office of the Louisiana Legislative Auditor. Failure to comply with requests for documents may render the management organization ineligible to contract with any BESE-authorized charter school as a management organization for up to five years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1363 (July 2008), amended LR 37:2385 (August 2011), LR 38:

Chapter 9. Opening of Charter School

§901. Timeline for Charter School Opening

A. A charter school shall begin operation by not later than 24 months after the final approval of the charter, unless such charter school is engaged in desegregation compliance issues and, therefore, must begin operation by not later than 36 months. However, upon request, the chartering authority may extend the time period within which any charter school must begin operation.

B. ...

C. A charter school other than a Type 5 shall not begin operation sooner than eight months after approval of the charter school has been granted, unless the chartering authority agrees to a lesser time period.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1363 (July 2008), amended LR 37:870 (March 2011), LR :37:2385 (August 2011), LR 38:

Chapter 11. Ongoing Review of Charter Schools

§1101. Charter School Evaluation

A. - E.6. ...

F. Legal and Contract Performance

1. BESE shall evaluate a charter school's performance based on the Department of Education's oversight and monitoring of the charter school's compliance with its statutory, regulatory, and contractual obligations and all reporting requirements. Type 5 charter schools will be subject to oversight in these areas by the department and the recovery school district, which shall regularly report findings to the Office of Parental Options.

2. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1363 (July 2008), amended LR 37:871 (March 2011), repromulgated LR 37:1124 (April 2011), amended LR 37:2385 (August 2011), LR 38:

Chapter 13. Charter Term

§1303. Third Year Review

A. ...

B. Each Type 2, Type 4, and Type 5 charter school's comprehensive report and its third year evaluation shall be used to determine if the school will receive a two-year extension, as follows.

1. Contract Extension

a. Each charter school shall provide a comprehensive report to its chartering authority at the end of the third year, to be considered in addition to the academic, financial, and legal and contractual performance data

collected by the Office of Parental Options or the recovery school district for the charter school's first three years. If such report and performance data reveal that the charter school is achieving the following goals and objectives, the board shall, by January of the school's fourth year, permit the charter school to complete the remainder of its initial five-year term:

B.1.a.i. - B.1.b. ...

2. Schools That Fail to Meet Extension Standards

a. If a charter school fails to meet any of the standards set forth in Paragraph B.1 of this Section, BESE may, at the superintendent's recommendation, take one of the following actions based on information provided by the Office of Parental Options and the recovery school district, if the school is a Type 5 charter school:

2.a.i - 3.b.i. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1367 (July 2008), amended LR 37:2387 (August 2011), LR 38:

Chapter 15. Charter Renewal

§1503. Charter Renewal Process and Timeline

A. - E.1. ...

2. Not later than January of the charter school's fifth year, the state superintendent of education will make a recommendation to BESE about the disposition of any school whose contract is up for renewal. The basis for the recommendation will be the charter school's student, financial, and legal and contractual performance during years one through four of the charter contract.

3. Based on the school's academic, financial, and contractual performance, the State Superintendent of Education may recommend one of three actions:

E.3.a. - F.2. ...

3. Not later than January of the charter school's final contract year, the state superintendent of education will make a recommendation to BESE about the disposition of any school whose contract is up for renewal. The basis for the recommendation will be the charter school's student, financial, legal and contractual performance during its current charter contract.

4. Based on the school's academic, financial, and legal and contractual performance over the current charter contract term, the state superintendent may recommend one of the following actions:

F.4.a. - G.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981 and R.S. 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:479 (March 2010), amended LR 37:871 (March 2011), LR 37:2388 (August 2011), LR 38:

Chapter 17. Revocation

§1703. Revocation Proceedings

A. Recommendation to Revoke Charter for BESE-Authorized Charter Schools

1. A recommendation to revoke a charter shall be made to BESE by the state superintendent of education based on information provided by the Office of Parental Options and the Recovery School District, if the school is a Type 5 charter school, at least one BESE meeting prior to the BESE meeting at which the recommendation may be

considered, except as otherwise provided herein when the health, safety, and welfare of students is at issue.

2. Prior to the BESE meeting at which the state superintendent of education will make a recommendation that BESE commence a revocation proceeding, the Department of Education will inform the charter operator that it is requesting such and the reasons therefor and may meet with the charter operator, upon request, to discuss the revocation recommendation.

3. Following the state superintendent of education's recommendation to revoke a charter, BESE shall determine if it will commence a revocation proceeding.

A.4. - G.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1368 (July 2008), amended LR 37:872 (March 2011), LR 38:

Chapter 19. Amendments to BESE-Authorized Charters

§1903. Material Amendments for BESE-Authorized Charter Schools

A. A material amendment to a charter is an amendment that makes substantive changes to a charter school's governance, operational, or academic structure. Material amendments include:

1. changes in legal status or management, including the structure of the governing board, or assignment of or changes in management organization;

A.2. - D. ...

E. BESE shall delegate authority to the Department to approve a material amendment regarding Paragraphs A.3 and A.4 of this Section for any charter school meeting—the following conditions, as determined by the department:

E.1. ...

2. is not in "dialogue" with the department, as defined in §1101.E.5.c; and

E.3. - E.3.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3992.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1369 (July 2008), amended LR 37:873 (March 2011), LR 37:2389 (August 2011), LR 38:

Chapter 27. Charter School Recruitment and Enrollment

§2701. Students Eligible to Attend

A. - D. ...

E. Beginning with the 2011-2012 school year, each elementary and middle charter school, other than a Type 2 charter school, may request from and be granted by its chartering authority the authority to give preference in its enrollment procedures to students residing within the neighborhood immediately surrounding the school. The geographic boundaries of the neighborhood immediately surrounding such school shall be determined by the school's chartering authority. The recovery school district may grant or assign preference in its unified enrollment process, described in §2709 of this Bulletin, to students residing within geographic boundaries immediately surrounding each school, as determined by the recovery school district. Type 5

charter schools shall not reserve more than 50 percent of spots in each grade level served for such enrollment preference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3973, R.S. 17:3981, R.S. 17:10.5, R.S. 17:10.7, and R.S. 17:1990.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1373 (July 2008), amended LR 37:875 (March 2011), LR 37:2390 (August 2011), LR 38:

§2707. Application Period

A. ...

B. A student application period shall not be less than one month nor more than three months.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1374 (July 2008), amended LR 38:

§2709. Enrollment of Students, Lottery, and Waitlist

A. - F. ...

G. Any charter school not participating in the recovery school district's unified enrollment system in Paragraph J. of this Section shall maintain a waitlist of applicants not admitted to the charter school as a result of capacity being reached in a program, a grade, or the school.

G.1. - I. ...

J. Type 5 charter schools and traditional public schools in Orleans Parish transferred to the recovery school district pursuant to R.S. 17:10.5 and R.S. 17:10.7 shall comply with any unified enrollment system established by the recovery school district. Other charter schools located within Orleans Parish may participate in the unified enrollment system upon approval by their charter boards. Other traditional public schools in Orleans Parish may participate in the unified enrollment system upon approval by the local school board. The recovery school district may create any policies and procedures to implement a unified enrollment system not prohibited by this chapter, and may conduct one or more central lotteries to enroll students at participating schools, and enroll students applying or requesting transfers or entering the public school system at any point in time. In addition, the Recovery School District shall, in consultation with a participating school, determine the number of students assigned per grade level for the school each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1374 (July 2008), amended LR 38:

Chapter 39. Corporate Partnerships

§3901. Corporate Partnerships and Enrollment

A. Notwithstanding geographic or other requirements for enrollment contained in this bulletin, a charter agreement may provide, initially or by amendment, for the enrollment of and an enrollment preference for dependent children of permanent employees of a corporate partner.

B. Up to 50 percent of the school's maximum enrollment may be reserved for the enrollment of such children.

C. The charter agreement shall specify both the school's maximum enrollment and the maximum proportion set aside for implementation of this enrollment preference.

D. An enrollment preference established as part of the Corporate Partnership defined in this Chapter shall not be implemented in a way that displaces children enrolled at the school at the time the charter agreement or amendment providing for the preference is authorized.

E. Enrollment at the school shall otherwise be as provided by this Chapter except that the requirement of R.S. 17:3991(B)(1)(a)(i) shall apply to and be based upon only students who are not dependent children of permanent employees of a corporate partner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:

§3903. Requirements for Corporate Partnerships

A. A corporate partner is any legal entity, whether for profit or not for profit, registered with the secretary of state, except a corporation identified in R.S. 18:1505.2(L)(3), that has, acting individually or as part of a consortium of corporations, donated one or more of the following to the school:

1. the land on which the school is built;
2. the school building or the space the school occupies. If the corporate partner is leasing the building or space to the school, the enrollment preference or board membership may only be provided in the charter agreement if the lease provides that the building or space is made available without cost and if the term of the lease is not less than the duration of the charter agreement;
3. major renovations to the existing school building or other capital improvements including major investments in technology.

B. For purposes of this Chapter, a major renovation to the existing school building means changes that provide significant opportunities for substantial improvement including but not limited to:

1. a structural change to the foundation, roof, floor, or interior or exterior walls or extension of an existing facility to increase its floor area;
2. an extensive alteration of an existing facility, such as a change in its function or purpose, even if such renovation does not include any structural change to the facility.

C. A major investment in technology includes but is not limited to a donation of:

1. hardware;
2. software;
3. internet access;
4. internet hardware;
5. enterprise systems;
6. software licenses;
7. smart board technology; or
8. audiovisual equipment.

D. The value of a major renovation or of an investment of technology shall be equal to at least 50 percent of the per pupil allocation of state funds by the minimum foundation program formula for that year for the parish in which the school is located multiplied by the school's enrollment as defined in the charter agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:

§3905. Corporate Partner Representation on Charter Boards

A. A charter agreement may provide, initially or by amendment, for a corporate partner to have representation on its governing or management board; however, such representation may not constitute a majority of the board. Such membership is subject to all other provisions of law except any contrary provision in this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 19, 2012, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Bulletin 126—Charter Schools**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed revisions to Bulletin 126 concern management organizations, legislation passed in the 2011 regular legislative session, the proposed RSD Public School Enrollment Process, the monitoring and oversight of Type 5 charter schools, and charter amendments for changes in student enrollment and grade levels served. To the extent that this policy shall allow for the growth or decline of charter schools in the state, state and local per pupil allocations through the state's Minimum Program Foundation formula could change by an undeterminable amount. The RSD has secured funding from outside resources to ensure the successful implementation of the RSD Public School Enrollment Process. There will be a cost of \$164 associated with publication of the proposed rule change in the *Louisiana Register*.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections at the state or government level.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no economic costs or benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed policy could result in the creation or termination of charter schools within school districts across the state. To the extent that these schools will operate in competition with district schools for students, faculty, and resources, it will have an undetermined effect on competition and employment in the state.

Beth Scioneaux
Deputy Superintendent
1112#045

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Compulsory Attendance
(LAC 28:CXV.1103)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 741—Louisiana Handbook for School Administrators*: §1103. Compulsory Attendance. This policy revision, required by Act 166 of the 2011 Regular Legislative Session, allows for a child who is at least seventeen years of age and who, after successfully completing a program established by the State Board of Elementary and Secondary Education, has been issued a Louisiana High School Equivalency Diploma in accordance with criteria established by the Board of Supervisors of Community and Technical Colleges, shall be considered exited from high school.

**Title 28
EDUCATION**

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

§1103. Compulsory Attendance

A. - B.3. ...

4. A student who is at least seventeen years of age may exit high school without violating compulsory attendance statute (R.S. 17:221), if that student has met the following criteria:

- completed a program established by BESE;
- achieved a passing score on the GED test; and
- received a Louisiana High School Equivalency Diploma issued by the Board of Supervisors of Louisiana Community and Technical College System.

C. - N. ...

NOTE: refer to §1117.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:112; R.S. 17:221.3-4; R.S. 17:226.1; R.S. 17:233.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1273 (June 2005), amended LR 32:546 (April 2006), LR 32:1030 (June 2006), LR 33:2351

(November 2007), LR 35:641 (April 2009), LR 35:1097 (June 2009), LR 35:1475 (August 2009), LR 36:482 (March 2010), LR 36:1224 (June 2010), LR 37:1126 (April 2011), LR 37:2132 (July 2011), LR 38:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed rule on small businesses.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., February 19, 2012, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators—Compulsory Attendance

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The policy revisions to Bulletin 741: *Louisiana Handbook for School Administrators*, Chapter 11, Section 1103 Compulsory Attendance, are related to Act 166 of the 2011 Louisiana Legislative Regular Session. Current compulsory school attendance policy does not allow for a student to exit secondary education with a Louisiana High School Equivalency Diploma prior to his/her 18th birthday. This policy does not allow a student who passes the GED test to exit high school before age 18. In the newly developed Connections Process, overage students may opt for the GED exiting pathway after one year of intense/targeted remediation and

Connections committee approval. A student entering Connections at age 15 could successfully complete the Connections Process and GED exiting pathway requirements prior to age 18.

Beginning August 15, 2011, Act 166 took effect and allows for a child who is at least seventeen years of age and who, after successfully completing a program established by the State Board of Elementary and Secondary Education, has been issued a Louisiana High School Equivalency Diploma in accordance with criteria established by the Board of Supervisors of Community and Technical Colleges shall be considered exited from high school.

The policy revision allows students who successfully complete the Connections Process and GED exiting pathway requirements to exit high school prior to age 18.

For each student who exits a public school as a result of this law and policy change, there will be a decrease in cost to the state and the local school district through the Minimum Foundation Program (MFP).

There are student enrollment counts of the MFP taken each school year on October 1st and February 1st. If a student withdraws from school after the October 1st count and before the February 1st count, the full per pupil MFP allocation would be reduced from the district's payments. If a student withdraws from school after the February 1st count, the per pupil allocation would be reduced by half from the district's payments. The actual reduction in cost per student will depend on the district in which the student is enrolled, and the time of year the student may have withdrawn from school if this law and policy was not implemented.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no costs or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1201#036

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Connections Process (LAC 28: CXV.2907)

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 741—Louisiana Handbook for School Administrators: §2907. Connections Process*. *Connections* is a one year process for overage students to receive targeted instruction and accelerated remediation. The connections process will include the following elements: academic and behavioral interventions; mentoring; job skills training; TABE locator and battery assessments; committee reviews; parent meetings; individual prescriptions for instruction; individual graduation plans; and exiting pathways (High School

Diploma via Accelerated Pathway: Core or Career Diploma; GED Pathway; State-approved Skills Certificate). Students on the High School Diploma and GED pathways may also work towards Industry Based Certification.

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 29. Alternative Schools and Programs

§2907. Connections Process

A. The connections process replaces Louisiana's PreGED/Skills Option Program. Connections is a one year process for overage students to receive targeted instruction and accelerated remediation aimed at attaining a high school diploma, high school equivalency diploma (by passage of GED® tests), or state-approved skills certificate. The process includes a connections profile to track the following elements: academic and behavioral interventions; mentoring; job skills training; TABE locator and battery assessments; committee reviews; parent meetings; individual prescriptions for instruction; individual graduation plans; and exiting pathways. While in the connections process, students are 8th graders. Students can move from any middle school grade into the connections process provided they meet the criteria below.

NOTE: Refer to High Stakes Testing Policy in Bulletin 1566—Guidelines for Pupil Progression Plans.

B. A school system shall implement the connections process and shall obtain approval from the DOE at least 60 days prior to establishment. A program application describing the connections process shall be submitted and shall address the following program requirements.

1. - 4. ...

5. There shall be three exiting pathways for the connections process student provided the student has completed all requirements for LEAP or LAA2 (if applicable) testing. In addition, a student pursuing a high school diploma or GED® may work on an industry based certification (recommended TABE reading grade level score = 8.0). All students will be tested in reading, and depending on need, may also be tested in math and/or language.

5.a - 5.cii. ...

d. A student who has not participated in the connections process may request a waiver, due to extenuating circumstances, and may enter the SASC or GED pathway upon approval of a committee designated by the school administration. The student must be afforded the same opportunities as a connections student, including mentoring and committee meetings. A copy of the waiver and back-up documentation must be kept in the student's profile which will follow him/her until graduation.

e. A student's IPI shall be maintained until the student completes an exiting pathway.

6. The connections process shall include the following components:

- a. District coordinator
- b. Lead Teacher/JAG Specialist
- c. Counselor
- d. ELA/math certified teachers
- e. CTE/IBC certified teachers
- f. Special Education certified teacher for SWDs
- g. Teachers who are certified to offer Carnegie unit credits

- h. Mentor/JAG Specialist
 - i. Low teacher: student ratio will be required at each site: 1:15 or 1:25 with a paraprofessional in the class
 - j. TABE certified test administrators
7. - 9. ...

C. While enrolled as an eighth grader in the connections process, they shall be required to take the eighth grade LEAP or LAA2 (if applicable). The high stakes testing policy in Bulletin 1566 applies.

D. Upon committee review and recommendation a student who makes significant progress may remain in the connections process for a maximum of one additional year before entering an exiting pathway.

E. Further information on full process implementation can be found in the connections process handbook on the Louisiana Department of Education website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:100.5.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1308 (June 2005), amended LR 34:2032 (October 2008), LR 37:2131 (July 2011), LR 38:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed rule affect the stability of the family? No.
2. Will the proposed rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed rule affect the functioning of the family? No.
4. Will the proposed rule affect family earnings and family budget? No.
5. Will the proposed rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed rule? No.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the regulatory flexibility act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., February 19, 2012, to: Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Bulletin 741—Louisiana Handbook for School Administrators—Connections Process**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
The Department of Education recommends relevant policy revisions to Bulletin 741: *Louisiana Handbook for School Administrators* as they relate to the elimination of the Pre-GED/Skills Options Program and the implementation of the newly developed *Connections Process* that will take its place. There will be no costs to state or local governmental units as a result of this policy change. The Louisiana Department of Education anticipates the costs for the Local Education Agencies to operate the Connections Process will be similar to the costs incurred in operating the Pre-GED Skills/Options Program.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will be no estimated cost and/or economic benefit to directly affected persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There will be no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1201#038

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Curriculum and Instruction (LAC 28: CXV.2318 and 2319)

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 741—Louisiana Handbook for School Administrators*: §2318. The College and Career Diploma and §2319. The Career Diploma. These policy revisions add three courses to the list of courses meeting graduation requirements and restore some language accidentally changed in previous revisions. These revisions were requested by districts and schools.

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 23. Curriculum and Instruction §2318. The College and Career Diploma

- A. - C.2.f.ii. Note ...
 - g. Electives—8 units:
 - i. shall include the minimum courses required to complete a career area of concentration for incoming freshmen 2010-2011 and beyond.
 - (a). The Area of Concentration shall include one unit of Education for Careers, ~~or~~ Journey to Careers, or JAG.

h. Total—124 units.
 3. For incoming freshmen in 2008-2009 and beyond who are completing the Louisiana Core 4 Curriculum, the minimum course requirements shall be the following.

NOTE: For courses indicated with *, an Advanced Placement (AP) or International Baccalaureate (IB) course designated in §2325 may be substituted.

- a. English—4 units:
 - i. English I;
 - ii. English II;
 - iii. English III*;
 - iv. English IV*.
- b. Mathematics—4 units
 - i. Algebra I, Applied Algebra I, or Algebra I-Pt. 2;
 - ii. Geometry or Applied Geometry;
 - iii. Algebra II;
 - iv. the remaining unit shall come from the following:
 - (a). Financial Mathematics;
 - (b). Math Essentials;
 - (c). Advanced Math—Pre-Calculus;
 - (d). Advanced Math—Functions and Statistics;
 - (e). Pre-Calculus*;
 - (f). Calculus*;
 - (g). Probability and Statistics*;
 - (h). Discrete Mathematics;
 - (i). AP Calculus BC, or
 - (j). a locally initiated elective approved by BESE as a math substitute.
- c. Science—4 units:
 - i. 1 unit of Biology*;
 - ii. 1 unit of Chemistry*;
 - iii. 2 units from the following courses:
 - (a). Physical Science;
 - (b). Integrated Science;
 - (c). Physics I*;
 - (d). Physics of Technology I;
 - (e). Aerospace Science;
 - (f). Biology II*;
 - (g). Chemistry II*;
 - (h). Earth Science;
 - (i). Environmental Science;
 - (j). Physics II*;
 - (k). Physics of Technology II;
 - (l). Agriscience II;
 - (m). Anatomy and Physiology; or
 - (n). a locally initiated elective approved by BESE as a science substitute.
 - iv. Students may not take both Integrated Science and Physical Science;
 - v. Agriscience I is a prerequisite for Agriscience II and is an elective course;
 - vi. a student completing a career area of concentration may substitute one of the following BESE/Board of Regents approved IBC course from among the primary courses in the student's area of concentration for the fourth required science unit:
 - (a). Nutrition and Foods and Advanced Nutrition and Foods;
 - (b). Food Services II;
 - (c). Allied Health Services II;
 - (d). Dental Assistant II;

(e). Emergency Medical Technician-Basic (EMT-B);

- (f). Health Science II;
- (g). Medical Assistant II;
- (h). Sports Medicine III;
- (i). Advanced Electricity/Electronics;
- (j). Process Technician II;
- (k). NCCR Electrical II;
- (l). Computer Service Technology II;
- (m). Horticulture II;
- (n). Networking Basics;
- (o). Routers and Routing Basics;
- (p). Switching Basics and Intermediate Routing;
- (q). WAN Technologies;
- (r). Animal Science;
- (s). Biotechnology in Agriscience;
- (t). Environmental Studies in Agriscience;
- (u). Equine Science;
- (v). Forestry;
- (w). Horticulture;
- (x). Small Animal Care/Management;
- (y). Veterinary Assistant; ~~and~~
- (z). Oracle Academy Course: DB Programming with PL/SQL;
 - (aa). NCCR Electrical II TE; and
 - (bb). NCCR Electricity in Agriscience.
- d. Social Studies—4 units:
 - i. Civics* (1 unit) or 1/2 unit of Civics* and 1/2 unit of Free Enterprise;

NOTE: Students entering the ninth grade in 2011-2012 and beyond must have one unit of Civics with a section on Free Enterprise.

- ii. U.S. History*;
- iii. 1 unit from the following:
 - (a). World History*;
 - (b). World Geography*;
 - (c). Western Civilization*;
 - (d). AP European History.
- iv. 1 unit from the following:
 - (a). World History*;
 - (b). World Geography*;
 - (c). Western Civilization*;
 - (d). AP European History;
 - (e). Law Studies;
 - (f). Psychology;
 - (g). Sociology;
 - (h). Civics (second semester—1/2 credit); ~~or~~
 - (i). African American Studies; or
 - (j). Economics

NOTE: Students may take two half credit courses for the fourth required social studies unit.

- v. a student completing a career area of concentration may substitute one of the following BESE/Board of Regents approved IBC course from among the primary courses in the student's area of concentration for the fourth required social studies unit:
 - (a). Advanced Child Development;
 - (b). Early Childhood Education II;
 - (c). Family and Consumer Sciences II;
 - (d). ProStart II;
 - (e). T & I Cooperative Education (TICE);
 - (f). Cooperative Agriculture Education;
 - (g). Administrative Support Occupations;

- (h). Business Communication;
 - (i). Cooperative Office Education;
 - (j). Entrepreneurship – Business;
 - (k). Lodging Management II;
 - (l). Advertising and Sales Promotion;
 - (m). Cooperative Marketing Education I;
 - (n). Entrepreneurship—Marketing;
 - (o). Marketing Management;
 - (p). Marketing Research;
 - (q). Principles of Marketing II;
 - (r). Retail Marketing;
 - (s). Tourism Marketing;
 - (t). CTE Internship;
 - (u). General Cooperative Education II;
 - (v). STAR II.
- e. Health Education—1/2 unit:
- i. JROTC I and II may be used to meet the Health Education requirement. Refer to §2347.
- f. Physical Education—1 1/2 units:
- i. shall be Physical Education I and Physical Education II, or Adapted Physical Education for eligible special education students;
 - ii. a maximum of 4 units of Physical Education may be used toward graduation.
- NOTE: The substitution of JROTC is permissible.
- g. Foreign language—2 units:
- i. shall be 2 units in the same foreign language or 2 speech courses.
- h. Arts—1 unit:
- i. 1 unit Art (§2333), Dance (§2337), Media Arts (§2354), Music (§2355), Theatre Arts, (§2369), or Fine Arts Survey;
- NOTE: Students may satisfy this requirement by earning half credits in two different arts courses.
- ii. a student completing a career area of concentration may substitute one of the following BESE/Board of Regents approved IBC course from among the primary courses in the student's area of concentration for the fourth required applied art unit:
 - (a). Clothing and Textiles and Advanced Clothing and Textiles;
 - (b). NCCR Carpentry II TE;
 - (c). NCCR Welding Technology II;
 - (d). Advanced Metal Technology;
 - (e). Advanced Technical Drafting;
 - (f). Architectural Drafting;
 - (g). NCCR Carpentry II—T&I;
 - (h). NCCR Welding Technology II—T and I;
 - (i). Cabinetmaking II;
 - (j). Commercial Art II;
 - (k). Cosmetology II;
 - (l). Culinary Occupations II;
 - (m). Custom Sewing II;
 - (n). Graphic Arts II;
 - (o). Photography II;
 - (p). Television Production II;
 - (q). Upholstery II;
 - (r). Welding II;
 - (s). NCCR Carpentry In Agriscience;
 - (t). NCCR Welding Technology Agriscience;
 - (u). Agriscience Construction Technology;
 - (v). Agriscience Power Equipment;
 - (w). Floristry;

- (x). Landscape Design and Construction;
 - (y). Introduction to Business Computer Applications;
 - (z). Accounting II;
 - (aa). Business Computer Applications;
 - (bb). Computer Multimedia Presentations;
 - (cc). Desktop Publishing;
 - (dd). Keyboarding Applications;
 - (ee). Telecommunications;
 - (ff). Web Design I or II;
 - (gg). Word Processing; and
 - (hh). Digital Media II.
- i. Electives—3 units.
 - j. Total—24 units.
 - k. The substitutions below are allowed for students attending the New Orleans Center for Creative Arts.

- i. NOCCA Integrated English I, II, III, and IV can be substituted for English I, II, III, and IV.
- ii. NOCCA Integrated Mathematics I, II, and III can be substituted for Algebra I, Geometry and Algebra II.
- iii. NOCCA Integrated Science I, II, III, and IV can be substituted for Environmental Science, Biology, Chemistry, and Physics.
- iv. NOCCA Integrated World History I, II, III, and IV can be substituted for World Geography, World History, Civics, and US History.

4. High School Area of Concentration

- a. All high schools shall provide students the opportunity to complete an area of concentration with an academic focus and/or a career focus.
 - i. Incoming freshmen prior to 2008-2009 can complete an academic area of concentration by completing the current course requirements for the Taylor Opportunity Program for Students (TOPS) Opportunity Award.
 - ii. Incoming freshmen in 2008-2009 and beyond can complete an academic area of concentration by completing the course requirements for the LA Core 4 curriculum.
 - iii. To complete a career area of concentration, students shall meet the minimum requirements for graduation including four elective primary credits in the area of concentration and two related elective credits, including one computer/technology course. Areas of concentration are identified in the career options reporting system with each LEA designating the career and technical education areas of concentration offered in their school system each year. The following computer/technology courses can be used to meet this requirement.

Course	Credit
Computer/Technology Literacy	1
Computer Applications or Business Computer Applications	1
Computer Architecture	1
Computer Science I, II	1 each
Computer Systems and Networking I, II	1 each
Desktop Publishing	1
Digital Graphics & Animation	1/2
Multimedia Presentations	1/2 or 1
Web Mastering or Web Design	1/2
Independent Study in Technology Applications	1
Word Processing	1
Telecommunications	1/2
Introduction to Business Computer Applications	1
Technology Education Computer Applications	1

Course	Credit
Advanced Technical Drafting	1
Computer Electronics I, II	1 each
Database Programming with PL/SQL	1
Java Programming	1
Database Design and Programming	1/2
Digital Media I, II	1 each

5. Academic Endorsement

a. Graduating seniors who meet the requirements for a College and Career diploma and satisfy the following performance indicators shall be eligible for an academic endorsement to the College and Career diploma.

i. Students graduating prior to 2011-2012 shall complete an academic area of concentration. Students graduating in 2011-2012 and beyond shall complete the following curriculum requirements.

NOTE: For courses indicated with *, an Advanced Placement (AP) or International Baccalaureate (IB) course designated in §2325 may be substituted.

(a). English—4 units:

- (i). English I;
- (ii). English II;
- (iii). English III*;
- (iv). English IV*.

(b). Mathematics—4 units:

- (i). Algebra I or Algebra I-Pt. 2;
- (ii). Geometry;
- (iii). Algebra II;
- (iv). The remaining unit shall come from

the following:

- [a]. Advanced Math—Pre-Calculus;
- [b]. Advanced Math—Functions and Statistics;
- [c]. Pre-Calculus*;
- [d]. Calculus*;
- [e]. Probability and Statistics*;
- [f]. Discrete Mathematics; or
- [g]. AP Calculus BC.

(c). Science—4 units:

- (i). Biology*;
- (ii). Chemistry*;
- (iii). 1 units of advanced science from the following courses: Biology II*, Chemistry II*, Physics*, or Physics II*;
- (iv). 1 additional science course.

(d). Social Studies—4 units:

- (i). Civics* (1 unit) or 1/2 unit of Civics* and 1/2 unit of Free Enterprise;

NOTE: Students entering the ninth grade in 2011-2012 and beyond must have one unit of Civics with a section on Free Enterprise.

- (ii). U.S. History*;
- (iii). 1 unit from the following:

- [a]. World History*;
- [b]. World Geography*;
- [c]. Western Civilization*;
- [d]. AP European History;

(iv). 1 unit from the following:

- [a]. World History*;
- [b]. World Geography*;
- [c]. Western Civilization;
- [d]. AP European History;
- [e]. Law Studies;

- [f]. Psychology,
- [g]. Sociology, or
- [h]. African American Studies.

(e). Health Education—1/2 unit:

(i). JROTC I and II may be used to meet the Health Education requirement. Refer to §2347.

(f). Physical Education—1 1/2 units:

(i). shall be Physical Education I and Physical Education II, or Adapted Physical Education for eligible special education students.

NOTE: The substitution of JROTC is permissible

(g). Foreign Language—2 units:

(i). shall be 2 units in the same foreign language.

(h). Arts—1 unit:

(i) shall be 1 unit from (§2333), Dance (§2337), Media Arts (§2354), Music (§2355), Theatre Arts, (§2369), or Fine Arts Survey;

(i) Electives—3 units.

ii. Assessment Performance Indicator

(a) Students graduating prior to 2013-2014 shall pass all four components of GEE with a score of *Basic* or above, or one of the following combinations of scores with the English language arts score at *Basic* or above:

- (i) one *Approaching Basic*, one *Mastery* or *Advanced*, *Basic* or above in the remaining two; or
- (ii) two *Approaching Basic*, two *Mastery* or above.

(b) Students graduating in 2013-2014 and beyond shall achieve a score of *Good* or *Excellent* on each of the following EOC tests:

- (i). English II and English III;
- (ii). Algebra I and Geometry;
- (iii). Biology and U.S. History.

NOTE: Transfer students need only meet this requirement for the EOC tests they are required to take according to the transfer rules found in §1829 of Bulletin 118.

iii. Students shall complete one of the following requirements:

- (a). senior project;
- (b). one Carnegie unit in an AP course and attempt the AP exam;
- (c). one Carnegie unit in an IB course and attempt the IB exam; or
- (d). three college hours of non-remedial credit in
 - (i). mathematics;
 - (ii). social studies;
 - (iii). science;
 - (iv). foreign language; or
 - (v). English language arts.

iv. Students shall meet the current minimum grade-point average requirement for the TOPS Opportunity Award.

v. Students shall achieve an ACT Composite Score of at least 23 or the SAT equivalent.

6. Career/Technical Endorsement

a. Students who meet the requirements for a College and Career diploma and satisfy the following performance indicators shall be eligible for a career/technical endorsement to the College and Career diploma.

i. Students graduating prior to 2011-2012 shall meet the current course requirements for the TOPS

Opportunity Award or the TOPS Tech Award. Students graduating in 2011-2012 and beyond shall meet the course requirements for the Louisiana Core 4 Curriculum.

ii. Students shall complete the career area of concentration.

iii. Assessment Performance Indicator

(a). Students graduating prior to 2009-2010 shall pass the English language arts, mathematics, science, and social studies components of the GEE at the *Approaching Basic* level or above. Students graduating in 2009-2010 and beyond prior to 2013-2014 shall pass all four components of the GEE with a score of basic or above or one of the following combinations with the English language arts score at basic or above:

(i). one *Approaching Basic*, one *Mastery* or *Advanced*, and *Basic* or above in the remaining two;

(ii). two *Approaching Basic*, two *Mastery* or above.

(b) Students graduating in 2013-2014 and beyond shall achieve a score of *Good* or *Excellent* on each of the following EOC tests:

(i). English II and English III;

(ii). Algebra I and Geometry;

(iii). Biology and U.S. History.

NOTE: Transfer students need only meet this requirement for the EOC tests they are required to take according to the transfer rules found in §1829 of Bulletin 118.

iv. Students shall complete a minimum of 90 work hours of work-based learning experience related to the student's area of concentration or senior project related to student's area of concentration with 20 hours of related work-based learning and mentoring and complete one of the following requirements:

(a). industry-based certification in student's area of concentration from the list of industry-based certifications approved by BESE; or

(b). three college hours in a career/technical area that articulate to a postsecondary institution, either by actually obtaining the credits and/or being waived from having to take such hours in student's area of concentration.

v. Students shall achieve a minimum GPA of 2.5.

vi. Students graduating prior to 2008-2009 shall achieve the current minimum ACT Composite Score (or SAT Equivalent) for the TOPS Opportunity Award or the TOPS Tech Award. Students graduating in 2008-2009 and beyond shall achieve a minimum ACT Composite Score (or SAT Equivalent) of 20 or the state ACT average (whichever is higher) or the Silver Level on the WorkKeys Assessment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:183.2; R.S. 17:395.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 31:2211 (September 2005), LR 31:3070 (December 2005), LR 31:3072 (December 2005), LR 32:1414 (August 2006), LR 33:429 (March 2007), LR 33:432 (March 2007), LR 33:2050 (October 2007), LR 33:2354 (November 2007), LR 33:2601 (December 2007), LR 34:1607 (August 2008), LR 36:1486 (July 2010), LR 37:547 (February 2011), LR 37:1128 (April 2011), LR 37:2129 (July 2011), LR 37:2132 (July 2011), LR 37:3193 (November 2011), LR 38:

§2319. The Career Diploma

A. - B.7.a. ...

C. Minimum Course Requirements

1. The minimum course requirements for a career diploma shall be the following.

a. English—4 units:

i. English I;

ii. English II;

iii. the remaining units shall come from the following:

(a). Technical Reading and Writing;

(b). Business English;

(c). Business Communications;

(d). Using Research in Careers (1/2 credit);

(e). American Literature (1/2 credit);

(f). Film in America (1/2 credit);

(g). English III;

(h). English IV;

(i). Senior Applications in English; or

(j). a course developed by the LEA and approved by BESE.

b. Mathematics—4 units:

i. Algebra I (1 unit), Applied Algebra I (1 unit), or Algebra I-Pt. 1 and Algebra I-Pt. 2 (2 units);

ii. The remaining units shall come from the following:

(a). Geometry or Applied Geometry;

(b). Technical Math;

(c). Medical Math;

(d). Applications in Statistics and Probability;

(e). Financial Math;

(f). Math Essentials;

(g). Algebra II;

(h). Advanced Math—Pre-Calculus;

(i). Discrete Mathematics; or

(j). course(s) developed by the LEA and approved by BESE.

c. Science—3 units:

i. 1 unit of Biology;

ii. 1 unit from the following physical science cluster:

(a). Physical Science;

(b). Integrated Science;

(c). Chemistry I;

(d). ChemCom;

(e). Physics I;

(f). Physics of Technology I;

iii. 1 unit from the following courses:

(a). Food Science;

(b). Forensic Science;

(c). Allied Health Science;

(d). Basic Body Structure and Function;

(e). Basic Physics with Applications;

(f). Aerospace Science;

(g). Earth Science;

(h). Agriscience II;

(i). Physics of Technology II;

(j). Environmental Science;

- (k). Anatomy and Physiology;
- (l). Animal Science;
- (m). Biotechnology in Agriculture;
- (n). Environmental Studies in Agriculture;
- (o). Health Science II;
- (p). EMT—Basic;
- (q). an additional course from the physical science cluster; or

(r). course(s) developed by the LEA and approved by BESE.

iv. students may not take both Integrated Science and Physical Science.

v. Agriscience I is a prerequisite for Agriscience II and is an elective course.

d. Social Studies—3 units:

i. U.S. History;

ii. Civics (1 unit) or 1/2 unit of Civics and 1/2 unit of Free Enterprise;

NOTE: Students entering the ninth grade in 2011-2012 and beyond must have one unit of Civics with a section on Free Enterprise.

iii. one of the following. The remaining unit shall come from the following:

(a). Child Psychology and Parenthood Education;

(b). Law Studies;

(c). Psychology;

(d). Sociology;

(e). World History;

(f). World Geography;

(g). Western Civilization;

(h). Economics;

(i). American Government;

(j). African American Studies; or

(k). a course developed by the LEA and approved by BESE.

e. Health Education—1/2 unit:

i. JROTC I and II may be used to meet the Health Education requirement. Refer to §2347.

f. Physical Education—1 1/2 units:

i. shall be Physical Education I and Physical Education II, or Adapted Physical Education for eligible special education students;

ii. a maximum of 4 units of Physical Education may be used toward graduation.

NOTE: The substitution of JROTC is permissible.

g. Career and Technical Education—7 credits:

i. Education for Careers, ~~or~~ Journey to Careers, or JAG;

ii. six credits required for a career area of concentration.

h. Total—23 units.

C.2. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:183.2; R.S. 17:183.3; R.S. 17:274; R.S. 17:274.1; R.S. 17:395.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 31:2211 (September 2005), LR 31:3070 (December 2005), LR 31:3072 (December 2005), LR 32:1414 (August 2006), LR 33:429 (March 2007), LR 33:432 (March 2007), LR 33:2050 (October 2007), LR 33:2354 (November 2007), LR 33:2601 (December 2007), LR 34:1607 (August 2008), LR 35:1230 (July 2009), LR 35:1876 (September 2009), LR 35:2321 (November

2009), LR 35:2750 (December 2009), LR 36:1490 (July 2010), LR 37:548 (February 2011), LR 37:1130 (April 2011), LR 37:2130 (July 2011), LR 37:3197 (November 2011), LR 38:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed rule on small businesses.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., February 19, 2012, to: Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Bulletin 741—Louisiana Handbook for School Administrators**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

These policy revisions to Sections 2318 and 2319 in *Bulletin 741: Louisiana Handbook for School Administrators* add three courses to the list of courses meeting graduation requirements and restore some language accidentally changed in previous revisions. These changes will not result in an increase in costs or savings to state or local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no costs or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1201#037

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act—Regulations for Students with Disabilities
(LAC 28:XLIII.540, 541, 542, and 543)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act: Subpart 1. Regulations for Students with Disabilities, §540. Definitions, §541. Use of Seclusion, §542. Physical Restraint, §543. Restrictions on the Use of Seclusion or Physical Restraint.* The rule was developed in response to Act 328 of the 2011 Regular Session of the Louisiana Legislature. The Act requires the State Board of Elementary and Secondary Education to approve rules related to the use of seclusion and restraint for students with exceptionalities in local education agencies in the state. The rule includes definitions, how seclusion will be used and who will determine the use of seclusion. The rule defines the attributes of a seclusion room. The use of physical restraint is described. Restrictions on the use of seclusion and physical restraint are included in the rule. Notification of parents or legal guardians and the school district's director or supervisor of special education is required when seclusion or restraint is used. Documentation of the use of seclusion or restraint is necessary, and if a student is involved in five incidents in a school year, the student's individualized education plan team shall review and revise the plan if necessary. School districts are required to adopt written guidelines and procedures concerning reporting requirements, notification to parents and school officials and explanations or methods of physical restraint and school employee training. The local school district will report instances where seclusion or physical restraint are used to the Department of Education, which will maintain a database of all reported instances of seclusion and physical restraint.

Title 28

EDUCATION

Part XLIII. Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act

Subpart 1. Regulations for Students with Disabilities

Chapter 5. Procedural Safeguards

§540. Definitions

A. As used in these Sections 541 through 543:

1. *Imminent Risk of Harm*—an immediate and impending threat of a person causing substantial injury to self or others;

2. *Mechanical Restraint*—

a. the application of any device or object used to limit a person's movement;

b. does not include:

i. a protective or stabilizing device used in strict accordance with the manufacturer's instructions for proper use and which is used in compliance with orders issued by an appropriately licensed health care provider;

ii. any device used by a duly licensed law enforcement officer in the execution of his official duties;

3. *Physical Restraint*—

a. bodily force used to limit a person's movement;

b. does not include:

i. consensual, solicited, or unintentional contact;

ii. holding of a student, by a school employee, for less than five minutes in any given hour or class period for the protection of the student or others;

iii. holding of a student, by one school employee, for the purpose of calming or comforting the student, provided the student's freedom of movement or normal access to his or her body is not restricted;

iv. minimal physical contact for the purpose of safely escorting a student from one area to another; or

v. minimal physical contact for the purpose of assisting the student in completing a task or response;

4. *Positive Behavior Interventions and Support*—a systematic approach to embed evidence-based practices and data-driven decision making when addressing student behavior in order to improve school climate;

5. *Seclusion*—a procedure that isolates and confines a student in a separate room or area until he or she is no longer an immediate danger to self or others;

6. *Seclusion Room*—a room or other confined area, used on an individual basis, in which a student is removed from the regular classroom setting for a limited time to allow the student the opportunity to regain control in a private setting and from which the student is involuntarily prevented from leaving;

7. *School Employee*—a teacher, paraprofessional, administrator, support staff member, or a provider of related services;

8. *Written Guidelines and Procedures*—the written guidelines and procedures adopted by a school's governing authority regarding appropriate responses to student behavior that may require immediate intervention.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:7(5)(b) and 17:416.21.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:

§541. Use of Seclusion

A. Seclusion shall be used only:

1. for behaviors that involve an imminent risk of harm;

2. as a last resort when de-escalation attempts have failed and the student continues to pose an imminent threat to self or others.

B. Seclusion shall not be used to address behaviors such as general noncompliance, self-stimulation, and academic

refusal. Such behaviors shall be responded to with less stringent and less restrictive techniques.

C. A seclusion room shall be used only as a last resort and when less restrictive measures, such as positive behavioral supports, constructive and non-physical de-escalation, and restructuring of a student's environment, have failed to stop a student's actions that pose an imminent risk of harm.

D. A student shall be placed in a seclusion room only by a school employee who uses accepted methods of escorting a student to a seclusion room, placing a student in a seclusion room, and supervising a student while he or she is in the seclusion room.

E. Only one student may be placed in a seclusion room at any given time, and the school employee supervising the student must be able to see and hear the student the entire time the student is placed in the seclusion room.

F. A seclusion room shall:

1. be free of any object that poses a danger to the student placed in the room;

2. have an observation window and be of a size that is appropriate for the student's size, behavior, and chronological and developmental age; and

3. have a ceiling height and heating, cooling, ventilation, and lighting systems comparable to operating classroom in the school.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:7(5)(b) and 17:416.21.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:

§542. Physical Restraint

A. Physical restraint shall be used only:

1. when a student's behavior presents a threat of imminent risk of harm to self or others and only as a last resort to protect the safety of self and others;

2. to the degree necessary to stop dangerous behavior; and

3. in a manner that causes no physical injury to the student, results in the least possible discomfort, and does not interfere in any way with a student's breathing or ability to communicate with others.

B. No student shall be subjected to any form of mechanical restraint.

C. No student shall be physically restrained in a manner that places excessive pressure on the student's chest or back or that causes asphyxia.

D. A student shall be physically restrained only in a manner that is directly proportionate to the circumstances and to the student's size, age, and severity of behavior.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:7(5)(b) and 17:416.21.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:

§543. Restrictions on the Use of Seclusion or Physical Restraint

A. Seclusion and physical restraint shall not be used as a form or discipline or punishment, as a threat to control, bully, or obtain behavioral compliance, or for the convenience of school personnel.

B. No student shall be subjected to unreasonable, unsafe, or unwanted use of seclusion or physical restraint.

C. A student shall not be placed in seclusion or physically restrained if he or she is known to have any medical or psychological condition that precludes such action, as certified by a licensed health care provider in a written statement provided to the school in which the student is enrolled.

D. A student who has been placed in seclusion or has been physically restrained shall be monitored continuously. Such monitoring shall be documented at least every 15 minutes and adjustments made accordingly, based upon observations of the student's behavior.

E. A student shall be removed from seclusion or released from physical restraint as soon as the reasons for justifying such action have subsided.

F. The parent or other legal guardian of a student who has been placed in seclusion or physically restrained shall be notified as soon as possible. The school shall document all efforts, including conversations, phone calls, electronic communications, and home visits, to notify the parent of a student who has been placed in seclusion or physically restrained.

G. The director or supervisor of special education shall be notified any time a student is placed in seclusion or is physically restrained.

H. A school employee who has placed a student in seclusion or who has physically restrained a student shall document and report each incident in accordance with the policies adopted by the school's governing authority. Such report shall be submitted to the school principal not later than the school day immediately following the day on which the student was placed in seclusion or physically restrained and a copy shall be provided to the student's parent or legal guardian.

I. If a student is involved in five incidents in a single school year involving the use of physical restraint or seclusion, the student's Individualized Education Plan team shall review and revise the student's behavior intervention plan to include any appropriate and necessary behavioral supports.

J. The documentation compiled for a student who has been placed in seclusion or has been physically restrained and whose challenging behavior continues or escalates shall be reviewed at least once every three weeks.

K. The governing authority of each public elementary and secondary school shall adopt written guidelines and procedures regarding:

1. reporting requirements and follow-up procedures;

2. notification requirements for school officials and a student's parent or other legal guardian; and

3. an explanation of the methods of physical restraint and the school employee training requirements relative to the use of restraint.

L. The guidelines and procedures shall be provided to all school employees and every parent of a child with an exceptionality.

M. The governing authority of each public elementary and secondary school shall report all instances where seclusion or physical restraint is used to address student behavior to the Department of Education.

N. The Department of Education shall maintain a database of all reported incidents of seclusion and physical

restraint of students with exceptionalities and shall disaggregated the data for analysis by school, student age, race, ethnicity, and gender, student disability, where applicable, and any involved school employees.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:7(5)(b) and 17:416.21.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? Lacks sufficient information to determine.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? Lacks sufficient information to determine.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? Lacks sufficient information to determine.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Lacks sufficient information to determine.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., February 19, 2012, to: Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act—Regulations for Students with Disabilities

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are minimal estimated costs to state or local governmental units. The rule does not mandate training. An existing database used by local education agencies and the

Louisiana Department of Education will be configured with current resources to capture the data required for the rule. The costs associated with this rule may result in expenses to notify parents or legal guardians and local supervisors or directors of special education of the incidents. It is estimated that each school district in the state may expend an additional \$100 per year to implement the rule. If seclusion rooms need to be constructed or renovated, the school district will have some costs. However, the rule does not require the use of seclusion rooms. It authorizes and stipulates the conditions of usage if the district employs the use of seclusion rooms.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no estimated effects on revenue collections of state or local governmental units. No revenue is collected as a result of this rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are minimal costs to directly affected persons, local school districts. There are no costs to non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment. School districts will most likely use existing personnel to implement the rule and many have staff who currently implement seclusion and restraint for students with exceptionalities.

Beth Scioneaux
Deputy Superintendent
1201#040

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Nonpublic Bulletin 741—Louisiana Handbook
for Nonpublic School Administrators
(LAC 28:LXXIX.119 and 2109)

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 741—Louisiana Handbook for Nonpublic School Administrators*: §119. Written Policies and §2109. High School Graduation Requirements. These policy revisions require nonpublic schools to have written policies and/or regulations to address harassment, bullying, and cyberbullying, and add three courses to the list of social studies courses meeting graduation requirements. These revisions were requested by districts and schools.

Title 28

EDUCATION

Part LXXIX. Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators Chapter 1. Operation and Administration §119. Written Policies

A. Each school system and/or independent school shall have written policies and/or regulations governing the general operation of the school.

B. Each school system and/or independent school shall have written policies and/or regulations to address harassment, bullying, and cyberbullying.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2343 (November 2003), amended LR 31:3074 (December 2005), LR 38:

Chapter 21. Curriculum and Instruction

Subchapter C. Secondary Schools

§2109. High School Graduation Requirements

A. - D.4. ...

E. For incoming freshmen in 2009-2010 and beyond who are completing the Louisiana Core 4 Curriculum, the minimum course requirements shall be the following:

1. English—4 units, shall be English I, II, III, and IV;
2. Mathematics—4 units, shall be:
 - a. algebra I (1 unit) or algebra I-Pt. 2;
 - b. geometry;
 - c. algebra II;
 - d. the remaining unit shall come from the following: financial mathematics, math essentials, advanced mathematics-pre-calculus, advanced mathematics-functions and statistics, pre-calculus, calculus, probability and statistics, discrete mathematics, AP Calculus BC, or a locally-initiated elective approved by BESE as a math substitute.
3. Science—4 units, shall be:
 - a. biology;
 - b. chemistry;
 - c. two units from the following courses: physical science, integrated science, physics I, physics of technology I, aerospace science, biology II, chemistry II, earth science, environmental science, physics II, physics of technology II, agriscience II, anatomy and physiology, or a locally initiated elective approved by BESE as a science substitute.
 - i. Students may not take both integrated science and physical science.
 - ii. Agriscience I is a prerequisite for agriscience II and is an elective course.
4. Social Studies—4 units, shall be:
 - a. 1 unit of civics or AP American government, or 1/2 unit of civics or AP American Government and 1/2 unit of free enterprise;
 - b. 1 unit of U.S. history;
 - c. 1 unit from the following: world history, world geography, western civilization, or AP European history;
 - d. 1 unit from the following: world history, world geography, western civilization, AP European history, law studies, psychology, sociology, African American studies, economics, world religions, history of religion, or religion I, II, III, or IV.
5. Health and Physical Education—2 units.
6. Foreign Language—2 units, shall be 2 units from the same foreign language or 2 speech courses.
7. Arts—1 unit, shall be one unit of art (§2305), dance (§2309), media arts (§2324), music (§2325), theatre, or fine arts survey. NOTE: Students may satisfy this requirement by earning half credits in two different arts courses.
8. Electives—3 units.
9. Total—24 units.

F. - F.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2351 (November 2003), amended LR 30:2776 (December 2004), LR 31:3081 (December 2005), LR 34:2099 (October 2008), LR 36:2849 (December 2010), LR 37:2142, 2144 (July 2011), repromulgated LR 37:2390 (August 2011), LR 37:2597 (September 2011), LR 38:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed rule affect the stability of the family? No.
2. Will the proposed rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed rule affect the functioning of the family? No.
4. Will the proposed rule affect family earnings and family budget? No.
5. Will the proposed rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed rule? Yes.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., February 19, 2012, to: Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

These policy revisions to Sections 119 and 2109 in *Bulletin 741: Louisiana Handbook for Nonpublic School Administrators* require nonpublic schools to have written policies and/or regulations to address harassment, bullying, and cyberbullying, and add three courses to the list of social studies courses meeting graduation requirements. These changes will not result in an increase in costs or savings to state or local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no costs or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1201#039

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Student Financial Assistance Commission
Office of Student Financial Assistance**

**Scholarship/Grant Programs
(LAC 28:IV.1415)**

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, and R.S. 17:3048.1).

This rulemaking will amend LASFAC's Scholarship/Grants rules for the Early Start Program to provide that the Board of Regents will approve courses taught by LAICU institutions and which are approved for use in the Early Start Program on a semester by semester basis and clarifies that the Statewide General Education Course Articulation Matrix is for participating public postsecondary institutions. (SG12135NI)

Title 28

EDUCATION

Part IV. Student Financial Assistance—Higher Education

Scholarship and Grant Programs

Chapter 14. Early Start Program

§1415. General Provisions

A. ...

B. The Board of Regents shall maintain a Statewide General Education Course Articulation Matrix for participating public postsecondary institutions.

C. The Board of Regents shall approve on a semester by semester basis the courses offered by LAICU postsecondary institutions that are approved for use in the Early Start Program.

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1, R.S. 17:3048.1 and R.S. 17:3048.5.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2611 (December 2007), amended LR 34:242 (February 2008), LR 35:234 (February 2009), LR 38:

Family Impact Statement

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972. The proposed Rule will have no adverse impact on small businesses as described in R.S. 49:965.2 et seq.

Public Comments

Interested persons may submit written comments on the proposed changes (SG12135NI) until 4:30 p.m., February 9, 2012, to Melanie Amrhein, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Scholarship/Grant Programs**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed changes to the Early Start program rules specify that the college courses in which students can enroll in public colleges are listed on the Statewide General Education Articulation Matrix and that courses for students enrolled in Louisiana Association of Independent Colleges and Universities (LAICU) schools are approved on a semester basis. The changes should not have a significant impact on types and number of college courses offered and there should be no implementation costs or savings due to this change.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Revenue collections of state and local governments will not be affected by the proposed changes.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed changes will not have a significant impact on the number or types of courses available for enrollment to Early Start students, so these students should not be affected by the change. The change from an annual to a semester basis approval for Early Start courses at LAICU schools will ensure that courses taught in only one semester per academic year will be available to students and could result in additional classes being offered for program participants at these schools.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no impact on competition or employment.

George Badge
General Counsel
1201#023

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of the Secretary**

**Nonattainment New Source Review Procedures
(LAC 33:III.504)(AQ326)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.504 (AQ326).

The Baton Rouge area (i.e., Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes) is currently designated as nonattainment with respect to the

1997 8-hour ozone NAAQS of 0.08 parts per million (ppm). Consequently, increases of NOX and VOC emissions are governed by Nonattainment New Source Review (NNSR) procedures under LAC 33:III.504. Under NNSR, owners or operators of new major stationary sources or major modifications must offset the emissions increase that would result from the proposed construction or modification by obtaining Emission Reduction Credits (ERC) banked in accordance with LAC 33:III.Chapter 6.

On August 30, 2011, EPA proposed to redesignate the Baton Rouge area to attainment of the 1997 ozone NAAQS (76 FR 53853). When this re-designation becomes effective, NNSR provisions, including those requiring offsets for significant NOX and VOC increases, will no longer be mandated by the Clean Air Act. However, another ozone standard will soon be implemented, and Baton Rouge will once again be designated as a nonattainment area.

On March 27, 2008, EPA lowered the ozone NAAQS from 0.08 ppm to 0.075 ppm (73 FR 16436); this standard became effective on May 27, 2008. However, on September 16, 2009, the agency announced that it would reconsider the ozone NAAQS. In concert with this decision, EPA stayed the 2008 standard with respect to designations. On January 19, 2010, EPA proposed that the level of the primary standard should instead be set within the range of 0.060 to 0.070 ppm (75 FR 2938). However, on September 2, 2011, President Obama "requested that Administrator Jackson withdraw the draft Ozone National Ambient Air Quality Standards." Because the ozone standard will not be revisited for several years, EPA is moving ahead with certain required actions to implement the 2008 standard. Based on air quality data from 2008–2010, Baton Rouge will be designated as nonattainment. EPA expects to finalize area designations by "mid-2012."

Therefore, based on EPA's implementation schedule, Baton Rouge will be an attainment area for a short period of time. According to LAC 33:III.504.F.2, "all emission reductions claimed as offset credit must have occurred later than the date upon which the area was designated nonattainment." Consequently, if this provision is not repealed, there will be no ERC available once the Baton Rouge area is formally designated as nonattainment under the 2008 ozone standard. The basis and rationale for this Rule are to preserve ERC applied for or approved in accordance with LAC 33:III.Chapter 6 after Baton Rouge is formally designated as nonattainment under the 2008 8-hour ozone NAAQS. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 5. Permit Procedures

§504. Nonattainment New Source Review (NNSR) Procedures

A. - F.1. ...

2. Repealed and Reserved.

F.3. - M.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation

Protection, Air Quality Division, LR 19:176 (February 1993), repromulgated LR 19:486 (April 1993), amended LR 19:1420 (November 1993), LR 21:1332 (December 1995), LR 23:197 (February 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 27:2225 (December 2001), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 30:2801 (December 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 31:3123, 3155 (December 2005), LR 32:1599 (September 2006), LR 33:2082 (October 2007), LR 34:1890 (September 2008), LR 37:1568 (June 2011), LR 38:

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ326. Such comments must be received no later than March 6, 2012, at 4:30 p.m., and should be sent to Perry Theriot, Attorney Supervisor, Office of the Secretary, Legal Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to perry.theriot@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ326. These proposed regulations are available on the internet at: www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 North Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Public Hearing

A public hearing will be held on February 28, 2012, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 North Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Perry Theriot at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

Herman Robinson, CPM
Executive Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Nonattainment New Source Review Procedures

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no estimated implementation costs or savings to state or local governmental units as a result of the proposed Rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of state or local governmental units as a result of the proposed Rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no costs to directly affected persons or nongovernmental groups as a result of the proposed Rule. This Rule will benefit owners or operators that currently possess or have applied for Emission Reduction Credits (ERC), because such ERC would remain creditable (subject to validation by LDEQ as being surplus, enforceable, permanent, and quantifiable prior to use as offsets) once the Baton Rouge area is formally designated as nonattainment under the 2008 ozone National Ambient Air Quality Standard (NAAQS). The magnitude of the benefit will be directly proportional to the amount of ozone season NO_x ERC, non-ozone season NO_x ERC, and VOC ERC each owner or operator holds, or has applied for.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment in the public or private sector because of the proposed Rule.

Herman Robinson, CPM
Executive Counsel
1112#019

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of the Secretary
Legal Affairs Division**

Stay of Permit Conditions Pending Administrative/Judicial Review (LAC 33:I.401, 403, 405, 407, III.537, V.705 and IX.309)(OS083)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Office of the Secretary regulations, LAC 33:I.401, 403, 405, 407, III.537, V.705 and IX.309 (OS083).

This Rule identifies permit conditions, or "classes" of permit conditions, that: will automatically be suspended upon request for review; may be suspended at the discretion of the secretary (which may be delegated to the Assistant Secretary for the Office of Environmental Services); and will not be suspended. It also provides guidance and standards for the exercise of discretion by the secretary. R.S. 30:2024(A) provides that a permit is "effective upon issuance unless a later date is specified therein." In some instances, the permit applicant requests review of conditions and limitations in the permit. It may be impractical or unduly expensive for the permit applicant to comply with the permit conditions pending the appeal. The basis and rationale for this rule are to provide environmentally safe and economically beneficial options for the department to manage "suspensions" of permit conditions pending the review process. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

**Subpart 1. Departmental Administrative Procedures
Chapter 4. Suspension of Contested Permit
Conditions**

§401. Purpose

A. This Chapter applies to the effectiveness of permit conditions contested pursuant to R.S. 30:2024.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 38:

§403. Suspension of Contested Conditions

A. Except as noted in Subsection B of this Section, during the course of an adjudicatory hearing or de novo judicial proceeding regarding a contested permit condition, all permit conditions contested by the applicant shall be suspended. All other provisions of the permit shall be effective unless the *administrative authority* as defined in LAC 33:I.107.A elects to suspend uncontested permit provisions that are not severable from those contested by the applicant.

B. Unless otherwise approved by the administrative authority, in writing, a contested permit condition shall not be suspended when:

1. the suspension may result in the withdrawal of delegation to the state of any authorized federal environmental program;
2. the suspension of the contested condition would violate general or numeric criteria found in LAC 33:IX.1113;
3. the contested condition is based on guidelines adopted by reference in LAC 33:IX.4901;
4. the contested condition prevents degradation in an outstanding natural resources water body; or
5. the suspension of the contested condition results in a violation of any memorandum of understanding between the department and the United States Fish and Wildlife Service.

C. Existing Permitted Facilities. To the extent that conditions in a newly-issued permit are suspended under this Section, the applicant must comply with the corresponding conditions of the existing permit that was replaced by the newly-issued permit, unless compliance with those conditions would be technologically incompatible with compliance with other conditions in the new permit which have not been suspended.

D. Newly Permitted Facilities. When a permit condition for a new facility, new source, new discharger, or a recommencing discharger is suspended, the applicant shall be prohibited from commencing any activities that may result in a release or discharge to the environment that are regulated by the suspended permit condition or related permit conditions that are not severable from the contested condition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 38:

§405. Procedure for Suspension of Contested Conditions

A. For a contested permit condition to be suspended, the applicant must submit a hearing request pursuant to R.S. 30:2024(A).

B. In the hearing request, the applicant must specifically identify the permit condition being contested and explain the basis for challenging the contested condition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 38:

§407. Effect of Suspension Following Action on Denial of a Hearing Request

A. Upon notice of the denial of a hearing request submitted pursuant to R.S. 30:2024(A), suspended permit conditions shall become effective unless the applicant timely files a petition for de novo review pursuant to R.S. 30:2024(C).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 38:

Part III. Air

Chapter 5. Permit Procedures

§537. Louisiana General Conditions

A. ...

Table 1. Louisiana Air Emission Permit General Conditions
I. – XVII. ...
XVIII. Provisions of the permit may be appealed to the secretary in writing pursuant to La. R.S. 30:2024(A) within 30 days from notice of the permit action.
XIX. – XX. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011, 2023, 2024, and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:660 (April 2009), amended LR 37:1146 (April 2011), LR 38:

**Part V. Hazardous Waste and Hazardous Materials
Subpart 1. Department of Environmental Quality—
Hazardous Waste**

Chapter 7. Administrative Procedures for Treatment, Storage, and Disposal Facility Permits

Subchapter A. Permits

§705. Issuance and Effective Date of Permit

A. – B.1. ...

2. review is requested under R.S. 30:2024, in which case effectiveness of permit conditions shall be governed by LAC 33:I.Chapter 4;

3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 14:790 (November 1988), LR 15:181 (March 1989), LR 16:614 (July 1990), LR 38:

**Part IX. Water Quality
Subpart 1. Water Pollution Control**

Chapter 3. Permits

Subchapter A. General Requirements

§309. Renewal and Termination

A. – B.3. ...

C. If the applicant submits a timely and complete application pursuant to LAC 33:IX.309.A, and the department, through no fault of the applicant, fails to act on the application on or before the expiration date of the existing permit, the permittee shall continue to operate the facility under the terms and conditions of the expired permit which shall remain in effect until final action on the application is taken by the department. If the application is denied, the expired permit shall remain in effect until the appeal process has been completed and a final decision rendered unless the secretary finds that an emergency exists which requires that immediate action be taken and in such case any appeal or request for review shall not suspend the implementation of the action ordered. Permits continued under this Section remain fully effective and enforceable. If the conditions of any new or renewed permit are contested by the permittee to R.S. 30:2024, the effectiveness of permit conditions shall be governed by LAC 33:I.Chapter 4.

D. – H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:1066 (November 1985), amended by the Office of the Secretary, LR 22:344 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2541 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2505 (October 2005), LR 33:2161 (October 2007), LR 38:

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by OS083. Such comments must be received no later than March 6, 2012, at 4:30 p.m., and should be sent to Perry Theriot, Attorney Supervisor, Office of the Secretary, Legal Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to perry.theriot@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of OS083. These proposed regulations are available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Public Hearing

A public hearing will be held on February 28, 2012, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Perry Theriot at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

Herman Robinson, CPM
Executive Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Stay of Permit Conditions Pending Administrative/Judicial Review

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
The proposed Rule change clarifies the Department of Environmental Quality's position on suspension of contested permit conditions by condensing into one regulation a number of existing regulations of the same or similar nature. There will be no significant implementation cost or savings to state or local governmental units because of the proposed rule change.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed Rule change will have no effect on revenue collections of state or local government units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
The proposed Rule change may result in an economic benefit to persons or non-governmental groups that receive permits through the Department of Environmental Quality through the avoidance of legal services or advice regarding the suspension of contested conditions.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There will be no effect on competition or employment in the public or private sector as a result of the proposed Rule change.

Herman Robinson, CPM
Executive Counsel
1112#018

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of the Secretary Legal Division

Waste Expedited Permitting Process
(LAC 33:I.1801)(OS090)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Office of the Secretary regulations, LAC 33:I.1801.B.4 (OS090).

This Rule will change the application process and issuance of solid waste permits. This change will allow solid waste permitting actions to be issued under the expedited permitting program found in LAC 33:I.Chapter 18. It will also allow permits under the hazardous waste program to be expedited. The solid waste permit system has been lengthy and cumbersome. Applicants have had to wait for a period of many years for a permit decision. DEQ revised the solid waste regulations to allow for a more direct permit approach, providing clarification of the regulations. These improvements can be complimented by reducing the timeline needed to obtain a solid waste permit. This Rule will provide an expedited process to obtain a solid waste permit. The basis and rationale for this rule is to allow permit actions to be issued in a more timely fashion and enhance the DEQ's ability to more efficiently process pending waste permit applications. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 1. Departmental Administrative Procedures Chapter 18. Expedited Permit Processing Program

§1801. Scope

A. - B.3. ...

4. A request for expedited permit processing submitted prior to submittal of the associated permit application will not be considered.

5. Requests for exemptions, letters of no objection, and other miscellaneous letters of response are not eligible for expedited permit processing.

C. - E.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.5.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1013 (June 2007), amended LR 38:

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by OS090. Such comments must be received no later than March 6, 2012, at 4:30 p.m., and should be sent to Perry Theriot, Attorney Supervisor, Office of the Secretary, Legal Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to perry.theriot@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of OS090. These proposed regulations are available on the internet at: www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 North Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office

Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Public Hearing

A public hearing will be held on February 28, 2012, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 North Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Perry Theriot at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

Herman Robinson, CPM
Executive Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Waste Expedited Permitting Process

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed Rule change may result in an indeterminable but likely minimal increase in the Department of Environmental Quality's administrative costs to prepare permits associated with the expedited permit processing program. However, these costs will be offset with the fee associated with the expedited permit processing program. The proposed Rule will add solid waste and hazardous waste permits to the types of permits that are eligible for this program.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed Rule change may result in an indeterminable increase in revenue collections due to the receipt of expedited permit processing fees by DEQ associated with the expedited permit processing program. Revenue collected through this fee will offset any increase in administrative costs associated with the program.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed Rule will impact applicants who apply for the expedited permit process for solid waste or hazardous waste permits. It is not possible to provide a specific cost estimate because the applicant has the ability to limit the amount spent for the expedited process. Use of the expedited permit processing program is an option and not a requirement.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed Rule change will have no effect on competition and employment.

Herman Robinson, CPM
Executive Counsel
1112#020

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity

Direct Rollovers (LAC 58:V.Chapter 5)

The Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans ("fund"), pursuant to R.S. 11:363(F), propose to restate and amend LAC 58:V. The restatement and amendment revises Section 501 to Chapter 5 to update the direct rollover requirements under the Internal Revenue Code of 1986 and repeals Sections 503 and 505 of Chapter 5. All currently stated rules of the fund, unless amended herein, shall remain in full force and effect.

Title 58

RETIREMENT

Part V. Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity

Chapter 5. Direct Rollovers

§501. Requirements

A. Notwithstanding any provision to the contrary, the fund shall permit a direct rollover of an eligible rollover distribution to an eligible retirement plan in accordance with section 401(a)(31) of the Internal Revenue Code of 1986 and the terms set forth herein, upon properly completing and filing the appropriate administrative forms.

B. Definitions

Direct Rollover—a payment by this fund to the eligible retirement plan specified by the distributee.

Distributee—includes a member or former member. In addition, the member's or former member's surviving spouse and the member's or former member's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the code, are distributees with regard to the interest of the spouse or former spouse. A distributee also includes, for distributions on and after January 1, 2010, a non-spouse beneficiary properly designated by the member.

Eligible Retirement Plan—an individual retirement account described in section 408(a) of the code, an individual retirement annuity described in section 408(b) of the code, an annuity plan described in section 403(a) of the code, or a qualified trust described in section 401(a) of the code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. An eligible retirement plan also shall include an annuity contract described in Code §403(b) and an eligible plan under code §457(b), which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. Effective for distributions made after January 1, 2008, an eligible

retirement plan shall also include a Roth individual retirement account or Roth individual retirement annuity described in section 408A of the code.

a. In the case of a non-spouse beneficiary, an eligible retirement plan is an individual retirement account or annuity described in section 408(a) of the code, or section 408(b) of the code (“IRA”) or, for distributions made after December 31, 2009, a Roth individual retirement account or annuity described in section 408A of the code, that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA pursuant to the provisions of section 402(c)(11) of the code.

Eligible Rollover Distribution—any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

a. any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee’s designated beneficiary, or for a specified period of 10 years or more;

b. any distribution to the extent such distribution is required under section 401(a)(9) of the code; and

c. any distribution totaling less than \$200 during the year.

C. Notice. A distributee entitled to an eligible rollover distribution must receive a written explanation of his/her right to a direct rollover, the tax consequences of not making a direct rollover, and, if applicable, any available special income tax elections and consequences. The notice must be provided within a reasonable period of time before the date of distribution of the pension benefit. The direct rollover notice must be provided to all distributees, unless the total amount of the distribution during the calendar year is expected to be less than \$200.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:3363.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity, LR 19:742 (June 1993), amended LR 22:708 (August 1996), LR 38:

§503. Distribution

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:3363.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity, LR 19:742 (June 1993), amended LR 22:708 (August 1996), repealed LR 38:

§505. Distribution to Beneficiaries

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:3363.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity, LR 19:743 (June 1993), amended LR 22:709 (August 1996), repealed LR 38:

Family Impact Statement

1. Estimated Effect on the Stability of the Family. There is no estimated effect on the stability of the family.

2. Estimated Effect on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. There is no estimated effect on the authority and rights of parents regarding the education and supervision of their children.

3. Estimated Effect on the Functioning of the Family. There is no estimated effect on the functioning of the family.

4. Estimated Effect on Family Earnings and Family Budget. There is no estimated effect on family earnings and family budget.

5. Estimated Effect on the Behavior and Personal Responsibility of Children. There is no estimated effect on the behavior and personal responsibility of children.

6. Estimated Effect on the Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. There is no estimated effect on the ability of the family or a local government to perform the function as contained in the proposed Rule.

Public Comments

Any interested person may submit written comments regarding the content of this proposed Rule change to Richard J. Hampton, Jr., Secretary-Treasurer and Executive Officer of the Board of Trustees, 3520 General DeGaulle, Suite 3001, New Orleans, LA, before 5 p.m., February 10, 2012.

Louis Robein
Fund Attorney

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Direct Rollovers

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will have no impact on state or local governmental expenditures. The rule seeks to update and amend the current regulations to reflect recent changes under the Internal Revenue Code and updated practices as related to the direct rollover of certain distributions of benefits paid by the Firefighters’ Pension and Relief Fund for the City of New Orleans. The proposed administrative rule merely updates the current rules to reflect the 2006 changes under the Internal Revenue Code, which the Fund has been complying with.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change will have no impact on costs and/or economic benefits to affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no effect on competition and employment.

Louis L. Robein
Fund Attorney
1201#091

Evan Brasseux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity

Tax Qualification Provisions
(LAC 58:V.2003 and 2005)

The Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans ("fund"), pursuant to R.S. 11:363(F), propose to restate and amend LAC 58:V. The restatement and amendment adds Section 2003 to Chapter 20 to update and clarify federal tax qualification requirements under the Internal Revenue Code of 1986. All currently stated rules of the fund, unless amended herein, shall remain in full force and effect.

Title 58

RETIREMENT

Part V. Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity

Chapter 20. Tax Qualification Provisions

§2003. Actuarial Equivalence

A. The New Orleans Firefighters Pension and Relief Fund shall be a tax-qualified governmental plan as provided in the Internal Revenue Code of 1986, as amended. In accordance with the requirements of the Internal Revenue Code, the following provisions shall apply to the fund.

1. The term actuarial equivalence or terms of similar import, wherever used, means a benefit of equivalent actuarial value determined by using the mortality assumptions and interest rates described herein.

a. The mortality assumptions will be based upon the 1971 Group Annuity Mortality Table for males, with male rates set back six years in age for females, at 7 percent interest.

b. If payment is in the form of a lump sum distribution or other similar form of distribution for a period less than the life expectancy, the amount of the distribution shall be calculated based on the 1994 UP at 7.5 percent interest.

c. For purposes of determining actuarial equivalence, the assumptions used as the basis for actuarial equivalence shall be reviewed periodically by the Board of Trustees and updated and amended if appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:3363.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity, LR 38:

§2005. Military Service

A. Notwithstanding any provision of this plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with section 414(u) of the Internal Revenue Code. To the extent applicable, the provisions of IRC section 401(a)(37) shall apply.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:3363.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity, LR 38:

Family Impact Statement

1. Estimated Effect on the Stability of the Family. There is no estimated effect on the stability of the family.

2. Estimated Effect on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. There is no estimated effect on the authority and rights of parents regarding the education and supervision of their children.

3. Estimated Effect on the Functioning of the Family. There is no estimated effect on the functioning of the family.

4. Estimated Effect on Family Earnings and Family Budget. There is no estimated effect on family earnings and family budget.

5. Estimated Effect on the Behavior and Personal Responsibility of Children. There is no estimated effect on the behavior and personal responsibility of children.

6. Estimated Effect on the Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. There is no estimated effect on the ability of the family or a local government to perform the function as contained in the proposed Rule.

Public Comments

Any interested person may submit written comments regarding the content of this proposed Rule change to Richard J. Hampton, Jr., Secretary-Treasurer and Executive Officer of the Board of Trustees, 3520 General DeGaulle, Suite 3001, New Orleans, LA, before 5 p.m., February 10, 2012.

Louis Robein
Fund Attorney

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Tax Qualification Provisions

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will have no impact on state or local governmental expenditures. The rule seeks to codify the actuarial factors used by the Firefighters' Pension and Relief Fund for the City of New Orleans in the determination of benefits and to incorporate the applicable provisions with regard to qualified military service as required under the Internal Revenue Code with respect to permitted benefit distribution and Fund governance. The proposed administrative rules merely codify and formalize current practice.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change will have no impact on costs and/or economic benefits to affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no effect on competition and employment.

Louis L. Robein
Fund Attorney
1201#090

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Board of Architectural Examiners**

**Administration—Placing of Seal or Stamp
(LAC 46:I.1305)**

Under the authority of R.S. 37:144(C) and in accordance with the provisions of R.S. 49:951 et seq., the Board of Architectural Examiners gives notice that rule making procedures have been initiated for the amendment of LAC 46:I.1305.A pertaining to the sealing or stamping of contract drawings and specifications prepared by an architect or consulting engineer. The existing Rule provides that an architect shall affix his or her seal or stamp to all contract drawings and specifications requiring the services of an architect prepared by the architect or under the architect’s responsible supervision, and the consulting engineer shall affix his or her seal or stamp to contract drawings and specifications prepared by the engineer. However, the existing Rule does not define the terms “contract drawings and specifications.” The proposed Rule amendment, if adopted, will provide that contract drawings and specifications include construction documents prepared for bidding or for receipt of proposals, as well as such documents submitted for permitting.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part I. Architects

Chapter 13. Administration

§1305. Placing of Seal or Stamp

A. An architect shall affix his or her seal or stamp to all contract drawings and specifications requiring the services of an architect which were prepared by the architect or under the architect’s responsible supervision. Contract drawings and specifications prepared by a consulting electrical, mechanical, structural, or other engineer shall be sealed or stamped only by the consulting engineer. Contract drawings and specifications within the meaning of this rule include construction documents prepared for bidding or for receipt of proposals, as well as such documents submitted for permitting.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:564 (April 2003), amended LR 38:

Family Impact Statement

Interested persons may submit written comments on this proposed Rule amendment to Ms. Mary “Teeny” Simmons, Executive Director, Board of Architectural Examiners, 9625 Fenway Avenue, Suite B, Baton Rouge, LA 70809.

Public Comments

The proposed Rule will have no known impact on family formation, stability, or autonomy, as described in R.S. 40:972.

Mary “Teeny” Simmons
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Administration—Placing of
Seal or Stamp**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule amendments will have no impact on state or local governmental unit expenditures. The proposed rule merely provides clarity to an existing rule by indicating exactly what documents prepared by or under the supervision of an architect or by the consulting engineer should be sealed or stamped.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect to state or local governmental units as a result of the proposed rule change.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

There will be no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

The proposed rule amendments are anticipated to have no effect on competition and employment in the public or private sectors.

Mary “Teeny” Simmons
Executive Director
1201#009

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Real Estate Commission**

Internet Advertising (LAC 46:LXVII.2515)

Under the authority of the Louisiana Real Estate License Law, R.S. 37:1430 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Real Estate Commission has initiated procedures to amend LAC 46:LXVII, Real Estate, Chapter 25 (Advertising; Disclosures; Representations), Section 2515 (Internet Advertising).

The proposed amendment seeks to reinsert previously removed language relative to the license regulatory jurisdiction information included in all internet advertising.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

**Part LXVII. Real Estate
Subpart 1. Real Estate**

Chapter 25. Advertising; Disclosures; Representations

§2515. Internet Advertising

A. - A.2. ...

3. the regulatory jurisdiction(s) in which the broker holds a real estate brokerage license.

B. - B.2. ...

3. the regulatory jurisdiction(s) in which the broker holds a real estate brokerage license.

C. - C.3. ...

NOTICE OF INTENT

**Department of Health and Hospitals
Addictive Disorder Regulatory Authority**

Addictive Disorder Regulatory Authority
(LAC 46:LXXX.501)

Notice is hereby given that the Department of Health and Hospitals, Addictive Disorder Regulatory Authority, has exercised the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and intends to amend LAC 46.LXXX.501, Fees of the Addictive Disorder Regulatory Authority.

The Addictive Disorder Practice Act is found at R.S. 37:3386-3390.6. R.S. 37:3390.6 authorizes the Addictive Disorder Regulatory Authority to impose fees for applications, renewals and other services. R.S. 37:3388.4(A)(5) and (13) authorize the Addictive Disorder Regulatory Authority to promulgate rules for administration and carrying out provisions of the Addictive Disorder Practice Act. These amendments are adopted in accordance therewith.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LXXX. Substance Abuse Counselors

**Chapter 5. ADRA Documents and Payment of Costs
§501. Fees**

A. The fees and penalties of the ADRA shall not exceed the following amounts:

1. Addiction Counselor and Prevention Practice Credential
 - a. Application (valid for one year) \$300
 - b. Renewal of Credential \$300
 - c. Certification by Reciprocity \$300
 - d. Late Fee for Renewal \$150
 - e. Reinstatement of Credential \$300
2. Specialty Certifications
 - a. Application (valid for one year) \$200
 - b. Renewal \$300
 - c. Late Fee for Renewal \$150
3. In-Training Status for Counselor and Prevention Practice Credential
 - a. Application (valid for one year) \$100
 - b. Renewal \$100
 - c. Late Fee for Renewal \$ 75
4. Treatment and Prevention Para-professional
 - a. Application (valid for one year) \$100
 - b. Renewal (valid for one year) \$100
 - c. Late Fee for Renewal \$ 50
5. Approved Training or Educational Institute, Provider or Institution
 - a. Application (valid for one year) \$250
 - b. Renewal \$250
 - c. Course Reports for Each Participant \$ 5
6. CEU Approval for Training or Educational Institutes, Providers or Institutions Who Do Not Obtain Approved Provider Status

4. the regulatory jurisdiction(s) in which the broker holds a real estate brokerage license.

D. - D.3. ...

4. the regulatory jurisdiction(s) in which the broker holds a real estate brokerage license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:43 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 28:829 (April 2002), LR 37:3004 (October 2011), LR 38:

Family Impact Statement

In accordance with R.S. 49:953(A)(1)(a)(viii) and 972, the following Family Impact Statement is submitted with the Notice of Intent for publication in the January 20, 2012, *Louisiana Register*: The proposed Rule has no known impact on family, formation, stability, or autonomy.

Public Comments

Interested parties are invited to submit written comments on the proposed regulations through February 3, 2012 at 4:30 p.m., to Stephanie Boudreaux, Louisiana Real Estate Commission, P.O. Box 14785, Baton Rouge, LA 70898-4785 or 9071 Interline Avenue, Baton Rouge, LA 70809.

Bruce Unangst
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Internet Advertising**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule amendment will have no impact on state or local governmental unit expenditures. The purpose of this amendment is to reinsert language that was removed regarding internet advertising in the July 20, 2011 promulgation of the complete reorganization of existing rules of the Louisiana Real Estate Commission.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue to state or local governmental units as a result of the proposed rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule amendment will directly affect Louisiana real estate licensees who will be required to identify the jurisdiction in which they are licensed in all internet advertising campaigns. There are no anticipated costs as a result of the proposed administrative rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule amendments are anticipated to have no effect on competition and employment the public and private sectors.

Bruce Unangst
Executive Director
1201#052

Evan Brasseaux
Staff Director
Legislative Fiscal Office

- a. Approval per Course \$150
- b. Course Reports for Each Participant \$ 5
- 7. Approval of CEU Credits Not Obtained from an Approved Provider or where the Provider Has Not Received ADRA Approval of the Course
 - a. For each 15 hours of CEU credit submitted \$ 50
- 8. Associated Application Fees – Requests must be submitted in writing along with the appropriate fee
 - a. Duplicate or Replacement Wall Certificate \$ 25
 - b. Duplicate or Replacement Wallet Card \$ 5
 - c. Application for Name Change \$ 25 (includes card and certificate)
 - d. Copy of Information from File \$0.25 per page
- 9. The ADRA may impose an administrative fee not to exceed \$500 for each violation of its regulations committed by any person holding any ADRA practice credential, ADRA specialty certification, ADRA training status or other professional or para-professional status offered or recognized by the ADRA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3388.4(5) and (12).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Addictive Disorders, Addictive Disorder Regulatory Authority, LR 33:649 (April 2007), amended by Department of Health and Hospitals, Addictive Disorder Regulatory Authority, LR 38:

Family Impact Statement

The proposed Rule changes have no impact on family formation, stability or autonomy, as described in R.S. 49:972.

Public Comments

Interested persons may submit written comments to LaMiesa D. Bonton, Executive Director, Addictive Disorder Regulatory Authority, 628 N. 4th Street, Bin #16, Baton Rouge, LA 70802. All comments must be received no later than 5 p.m., on February 10, 2012.

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Addictive Disorder Regulatory Authority

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Other than the Rule publication costs, which are estimated to be \$164 in FY12, it is not anticipated that the proposed Rule amendments will result in any material costs or savings to the Addictive Disorder Regulatory Authority (ADRA) or any state or local governmental unit.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The projected increases to various fees including applications for accreditation or certification, renewals, penalties, and four new fees could result in a possible revenue increase by the ADRA of approximately \$27,707 annually beginning in FY 13.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Affected persons will include, but are not limited to individuals testing for licenses or credentials and individuals holding credentials or licenses. The average increased cost to

- licensees for renewal is estimated to be \$11.20 per year. Applicants have a one-time fee increase average of approximately \$66.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The impact of the proposed action on competition and employment in the public and private sector will be minimal, as all will be required to pay the potential fee increase.

LaMiesa D. Bonton
Executive Director
1112#028

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Medical Examiners**

Clinical Laboratory Personnel, Licensure and Certification (LAC 46:XLV.3509)

Notice is hereby given that the Louisiana State Board of Medical Examiners (Board), pursuant to the authority of the Louisiana Medical Practice Act, R.S. 37:1261-1292, and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., intends to amend its administrative rules governing licensure and certification of clinical laboratory personnel (CLP), LAC 46:XLV, Subpart 2, Chapter 35, Subchapter B, Section 3509 in order to withdraw implementation of certain amendments which would otherwise be effective on July 1, 2012. Specifically, in February 2011 the board amended its CLP rules so that effective on and after June 30, 2011, only one certifying organization would be accepted for new applicants for CLP generalist and technician licensure [LR 37:596-597 (February 2011)]. In August 2011 the board amended Subsections 3509A and 3509C to delay implementation of these rule amendments for an additional year, from June 30, 2011 to June 30, 2012 [LR 37:2401 (August 2011)]. In the interim, the certifying organizations currently accepted by the Board's for CLP generalist and technician applicants for licensure continue to be recognized by the Board. The purpose of this rulemaking is to withdraw the prior amendments to Subsections 3509A and 3509C that were promulgated in February 2011 and to reform the list of currently recognized certifying organizations to reflect those which have merged or no longer exist. The effect of the proposed amendments is that each of the certifying organizations that were accepted by the board for CLP generalist and technician applicants for licensure before the adoption of the prior amendments to Subsections 3509A and 3509C in the February 2011 will continued to be recognized by the board for CLP generalist and technician applicants for licensure.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

- Part XLV. Medical Professions**
- Subpart 2. Licensure and Certification**
- Chapter 35. Clinical Laboratory Personnel**
- Subchapter B. Licensure and Certification Requirements**
- §3509. Qualifications for Licensure and Certification**
 - A. Clinical Laboratory Scientist-Generalist. To be eligible for licensure as a clinical laboratory scientist-

generalist an applicant, in addition to satisfaction of the procedural requirements for licensure under this Chapter, shall have successfully completed an approved nationally recognized certification examination for such clinical laboratory personnel classification as developed and administered by one of the following organizations or their successor organizations:

1. American Society of Clinical Pathologists (ASCP);
 2. American Medical Technologists (AMT); or
 3. American Association of Bioanalysts (AAB)
- provided, however, that an applicant for licensure as a CLS-G who has, prior to January 1, 1995, successfully completed the certification examination for such clinical laboratory personnel classification developed and administered by the United States Department of Health, Education, and Welfare (HEW) (predecessor to the Department of Health and Human Services) shall also be eligible for licensure as a clinical laboratory scientist-generalist;

B. - B.2.g. ...

C. Clinical Laboratory Scientist-Technician. To be eligible for licensure as a clinical laboratory scientist-technician, an applicant, in addition to satisfaction of the procedural requirements for licensure under this Chapter, shall have successfully completed an approved nationally recognized certification examination for such clinical laboratory personnel classification, as developed and administered by one of the following organizations or their successor organizations:

1. American Society of Clinical Pathologists (ASCP);
2. American Medical Technologists (AMT); or
3. American Association of Bioanalysts (AAB).

D. - F.2.h. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(5) and R.S. 37:1311-1329.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 20:1286 (November 1994), amended, LR 37:597 (February 2011), LR 37:2401 (August 2011), LR

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on the family has been considered. It is not anticipated that the proposed amendments will have any impact on family, formation, stability or autonomy, as described in R.S. 49:972.

Public Comments

Interested persons may submit written data, views, arguments, information or comments on the proposed rule amendments to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, at Post Office Box 30250, New Orleans, Louisiana, 70190-0250 (630 Camp Street, New Orleans, Louisiana, 70130), (504) 568-6820, Ex. 242. She is responsible for responding to inquiries. Written comments will be accepted until 4:00 p.m., February 20, 2012.

Robert L. Marier, M.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Clinical Laboratory Personnel, Licensure and Certification

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Other than the rule publication costs, the total of which are estimated to be \$274 during the current fiscal year, it is not anticipated that the proposed rule amendments will result in any material costs to the Board of Medical Examiners or any state or local governmental unit.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no estimated effects on the Board's revenue collections or that of any other state or local governmental unit anticipated from the proposed rule amendments.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

To be eligible for licensure as a clinical laboratory scientist an applicant must successfully complete a certification examination approved by the Board on the recommendation of its Clinical Laboratory Personnel Advisory Committee. On recommendation of the Committee, in February 2011 the Board amended Subsections 3509A and 3509C of its Clinical Laboratory Personnel (CLP) rules so that effective after June 30, 2011, the only certifying organization accepted by the Board would be the American Society of Clinical Pathologists (ASCP) for new applicants for CLP generalist and technician licensure (*LR Vol. 37, No. 2, pp. 596-597*). In August 2011 the Board delayed implementation of the rule for one-year, through June 30, 2012 (*LR Vol. 37, No. 8, p. 2401*). In the interim, the certifying organizations accepted under the Board's current rules for CLP generalist and technician applicants for licensure continue to be recognized by the Board. The Board has now determined to withdraw the amendments to Subsections 3509A and 3509C that were promulgated in February 2011, and which would otherwise be effective on July 1, 2012, and to reform the list of currently recognized certifying organizations to reflect those which have merged or no longer exist. The effect of the proposed amendments is that each of the certifying organizations that were accepted by the Board for CLP generalist and technician applicants for licensure prior to adoption of the previous rule change in the February 2011 will continue to be recognized by the Board for CLP generalist and technician applicants for licensure. The previous rule change had no anticipated impact on costs and/or economic benefits to directly affected persons beyond possible additional education or training for the small number of applicants who may seek CLP generalist or technician licensure on a basis other than ASCP certification. Because the certifying organizations accepted under the Board's current rules for CLP generalist and technician applicants for licensure will continue to be recognized by the Board, it is not anticipated that the proposed amendments will have any significant effect on costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is not anticipated that the proposed rule amendments will have any significant impact on competition or employment in either the public or private sector.

Robert L. Marier, M.D.
Executive Director
1201#080

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Board of Pharmacy

Cognitive Services (LAC 46:LIII.525)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy hereby gives notice of its intent to adopt a new section of rules, §525, Cognitive Services. The new Rule will define cognitive (other than dispensing) services provided by a pharmacist for the benefit of Louisiana residents, and will require those pharmacists performing such services to possess a Louisiana pharmacist license.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LIII. Pharmacists

Chapter 5. Pharmacists

Subchapter B. Professional Practice Procedures

§525. Cognitive Services

A. Definitions. As used in this Chapter, the following terms shall have the meaning ascribed to them in this Section.

Cognitive Services—those acts and operations related to a patient's drug therapy that are judgmental in nature, based on knowledge, and derived from empirical factual information. Such services may include, but are not necessarily limited to, the following:

- a. drug regimen review, drug use evaluation and drug information;
- b. provision of advice and counsel on drugs, the selection and use thereof to the facility, the patients therein, the health care providers of the facility regarding the appropriateness, use, storage, handling, administration, and disposal of drugs within the facility;
- c. participation in the development of policies and procedures for drug therapy within the institution, including storage, handling, administration, and disposing of drugs and devices;
- d. assuring the compliance with all applicable laws, rules, and regulations;
- e. provision of educational and drug information sources for the education and training of the facility health care professionals;
- f. accepting responsibility for the implementation and performance of review of quality-related or sentinel events.

B. Practice

1. A pharmacist who provides cognitive services to Louisiana residents shall be licensed by the board.
2. Cognitive services provided from outside a permitted pharmacy may not include the physical dispensing of medication to patients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:

Family Impact Statement

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the rule proposed for adoption, repeal, or amendment.

1. The effect on the stability of the family. We can discern no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. We can discern no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family. We can discern no effect on the functioning of the family.

4. The effect on family earnings and family budget. We can discern no effect on family earnings or family budget.

5. The effect on the behavior and personal responsibility of children. We can discern no effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in the proposed Rule. We can discern no effect on the ability of the family or a local government to perform the activity as contained in the proposed Rule.

Small Business Statement

In accordance with Section 965 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a regulatory flexibility analysis on the Rule proposed for adoption, repeal, or amendment. This will certify the agency has considered, without limitation, each of the following methods of reducing the impact of the proposed Rule on small businesses.

1. The establishment of less stringent compliance or reporting requirements for small businesses. The proposed rule seeks to identify professional, non-dispensing services provided by pharmacists to Louisiana residents and then requires such pharmacists to possess a Louisiana pharmacist license. The proposed Rule places no compliance or reporting requirements for small businesses in this state.

2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses. There are no schedules or deadlines for reporting requirements in the proposed Rule.

3. The consolidation or simplification of compliance or reporting requirements for small businesses. There are no reporting requirements in the proposed Rule.

4. The establishment of performance standards for small businesses to replace design or operational standards required in the proposed Rule. There are no design or operational standards in the proposed Rule.

5. The exemption of small businesses from all or any part of the requirements contained in the proposed Rule. The proposed Rule seeks to require any pharmacist providing cognitive services to any Louisiana resident to possess a Louisiana pharmacist license. The persons affected by the proposed Rule would be pharmacists practicing in another state. It is possible businesses in another state that provide cognitive services to Louisiana residents may need to require their pharmacist to also obtain a Louisiana pharmacist

license. In the absence of any other protections for Louisiana residents, the board believes an exemption for pharmacists employed by small businesses in another state is not in the public's best interest.

Public Comments

Interested persons may submit written comments to Malcolm J Broussard, Executive Director, Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, LA 70809-1700. He is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Tuesday, February 28, 2012 at 9 a.m. in the board office. At that time, all interested persons will be afforded an opportunity to submit data, views, or arguments, either orally or in writing. The deadline for the receipt of all comments is 12 noon that same day.

Malcolm J Broussard
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Cognitive Services

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is estimated that implementation of the proposed rule will cost the agency \$500 in FY 11-12, for printing costs.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will require those pharmacists performing cognitive services for the benefit of Louisiana residents to possess a Louisiana pharmacist license. There is no measurable impact on revenue collections for state or local governmental units at this time. However, should out-of-state pharmacists decide to pursue the practice of cognitive services in the state of Louisiana in future, the Board's revenue will increase by approximately \$1,000 per application for licensure and \$100 annually per renewal.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The cost to out-of-state pharmacists to acquire the initial pharmacist license in Louisiana is approximately \$1,000, and the annual renewal fee is \$100.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

We can discern no measurable effect on competition or employment in this state.

Malcolm J. Broussard
Executive Director
1201#030

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Board of Pharmacy

E-Communications (LAC 46:LIII.505, 905 and 1203)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy hereby gives notice of its intent to amend

§505, Licensure, §905, Pharmacy Technician Certificate and §1203, System(s) Registration, of its rules to facilitate the use of electronic communications processes for several of its credentials, including pharmacist licenses, technician certificates, and automated medication system registrations.

Title 46

Professional and Occupational Standards

Part LIII. Pharmacists

Chapter 5. Pharmacists

Subchapter A. Licensure Procedures

§505. Licensure

A. The board shall issue a license upon payment of appropriate fees when the board is satisfied the applicant is competent to practice pharmacy in the state.

1. Renewal. The board shall make the annual pharmacist license renewal application available to all currently licensed Louisiana pharmacists prior to November 1. The completed application along with the appropriate fee shall be submitted to the board by December 31 of each year. A pharmacist's renewal of licensure shall be displayed in the principal location where the pharmacist is engaged in the practice of pharmacy and in such a manner that said renewal may be seen by patrons. A renewal of licensure shall serve as proof of licensure and a pharmacist's license to practice pharmacy for that year of issuance.

a. Active. A pharmacist applicant shall pay the annual renewal fee, attain minimum continuing pharmacy education (CPE) as required, and complete and submit the annual renewal form to the board office before December 31 of each year.

b. Inactive. A pharmacist applicant may make a written request for inactive status from the board. The inactive pharmacist must complete the annual renewal form furnished by the board and submit it with the appropriate fee to the board before December 31 of each year. An inactive pharmacist shall not engage in the practice of pharmacy and is not required to obtain CPE. In order to upgrade an inactive license to active status, an inactive pharmacist shall petition the board and meet requirements of the reinstatement committee and the board. The board shall set the requirements necessary to assure competency for each individual applying for active status.

2. Expired License. A pharmacist license that has not been renewed by December 31 of each year shall expire and be null and void. The holder of an expired license may submit a written request, complete with any supporting documentation, for reinstatement to the board. The request may be referred preliminarily to the board's reinstatement committee for an informal hearing and recommendation that may be considered by the board at its next regularly scheduled meeting. The board may reinstate an expired license upon payment of applicable annual, delinquent, and lapsed license fees pursuant to R.S. 37:1184, as amended, and other conditions as the board deems appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2083 (October 2003), effective January 1, 2004, LR 33:1124 (June 2007), LR 38:

Chapter 9. Pharmacy Technicians

§905. Pharmacy Technician Certificate

A. - A.5. ...

B. Issuance and Maintenance

1. - 2. ...

3. The annual renewal shall expire and become null and void on June 30 of each year.

a. The board shall make available, no later than May 1 of each year, and application for renewal to all pharmacy technicians to the address of record.

3.b. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1212.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 30:2486 (November 2004), effective January 1, 2005, amended LR 38:

Chapter 12. Automated Medication Systems

§1203. System(s) Registration

A. The entire system shall be registered with the board and facilities shall meet the following conditions.

1. - 5. ...

6. Annual Renewal. The board shall make available an application for renewal to each registrant on or before May 1 each year. Said application shall be completed, signed, and, with annual fee, returned to the board office to be received on or before June 1 each year.

7. - 8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.A.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 26:1271 (June 2000), effective July 1, 2000, amended LR 38:

Family Impact Statement

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal, or amendment.

1. The effect on the stability of the family. We can discern no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. We can discern no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family. We can discern no effect on the functioning of the family.

4. The effect on family earnings and family budget. We can discern no effect on family earnings or family budget.

5. The effect on the behavior and personal responsibility of children. We can discern no effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in the proposed Rule. We can discern no effect on the ability of the family or a local government to perform the activity as contained in the proposed Rule.

Small Business Statement

In accordance with Section 965 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a regulatory flexibility analysis on the Rule proposed for adoption, repeal, or amendment. This will certify the agency has considered, without limitation, each of the following methods of reducing the impact of the proposed Rule on small businesses:

1. The establishment of less stringent compliance or reporting requirements for small businesses. There are no

reporting requirements associated with the proposed amendments.

2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses. There are no deadlines for reporting requirements associated with the proposed amendments.

3. The consolidation or simplification of compliance or reporting requirements for small businesses. There are no reporting requirements associated with the proposed amendments.

4. The establishment of performance standards for small businesses to replace design or operational standards required in the proposed Rule. There are no design or operational standards in the proposed amendments.

5. The exemption of small businesses from all or any part of the requirements contained in the proposed Rule. The proposed amendments will permit the board to use electronic communications processes with respect to the pharmacist licenses, technician certificates, and automated medication system registrations issued by the board. There are no requirements relative to small businesses in the proposed amendments; therefore, no exemptions were considered.

Public Comments

Interested persons may submit written comments to Malcolm J Broussard, Executive Director, Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, LA 70809-1700. He is responsible for responding to inquiries regarding these proposed amendments.

Public Hearing

A public hearing on these proposed amendments is scheduled for Tuesday, February 28, 2012 at 9 a.m. in the Board office. At that time, all interested persons will be afforded an opportunity to submit data, views, or arguments, either orally or in writing. The deadline for the receipt of all comments is 12 noon that same day.

Malcolm J Broussard
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: E-Communications**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is estimated that implementation of the proposed rule will cost the agency \$500 in FY 11-12, for printing costs. With the ability to mail reminder postcards instead of the application forms, we estimate a reduction in mailing costs of approximately \$1,900 per year going forward. Additional savings would accrue from the transition to using electronic reminders instead of reminder postcards in later years once all licensees have gone electronic.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

We can discern no measurable impact on revenue collections for state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed amendments will affect the pharmacist licenses, technician certificates, and automated medication system registrations issued by the Board. In particular, the pharmacist will no longer be required to display a copy of his

license, and the Board will be required to make renewal applications for technician certificates and automated medication system registrations available, as opposed to the current mailing requirement.

We can discern no costs or savings to other persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

We can discern no measurable effect on competition or employment in this state.

Malcolm J. Broussard
Executive Director
1201#032

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Board of Pharmacy

Hospital Pharmacy (LAC 46:LIII.1501, 1512 and 1513)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy hereby gives notice of its intent to amend §1501, Cross References, and §1513, Labeling, and to adopt §1512, Hospital Pharmacy Prepackaging. In particular, the proposed amendments will provide labeling standards for medications compounded or prepackaged in hospital pharmacies.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LIII. Pharmacists

Chapter 15. Hospital Pharmacy

§1501. Cross References

A. For all regulations that apply to permitted hospital pharmacies concerning pharmacy practices not specifically stated in this Chapter, refer to Chapters 11 and 25.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2093 (October 2003), effective January 1, 2004, amended LR 38:

§1512. Hospital Pharmacy Prepackaging

A. Prepackaging is the preparation of medication in a unit-of-use container by credentialed pharmacy personnel in a pharmacy prior to the receipt of a prescription or medical order for ultimate issuance by a pharmacist in Louisiana.

B. Labeling. The label on the prepackaged container shall contain the following minimum information:

1. drug name;
2. dosage form;
3. strength;
4. quantity dispensed when appropriate;
5. special storage requirements;
6. a unique pharmacy prepackage lot number which shall correspond to the following:
 - a. name of manufacturer and/or distributor;
 - b. manufacturer's lot or batch number;
 - c. date of preparation; and
 - d. verifying pharmacist's initials;
7. expiration date according to United States Pharmacopeia (USP) guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:

§1513. Labeling

A. All drugs dispensed or compounded by a hospital pharmacy, intended for use within the facility, shall be dispensed in appropriate containers and adequately labeled as to identify patient name and location, drug name(s) and strength, and medication dose(s). Additionally, compounded preparations and sterile preparations shall be labeled with the expiration date or beyond-use date, initials of the preparer, and the pharmacist performing the final check.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 29:2093 (October 2003), effective January 1, 2004, amended LR 38:

Family Impact Statement

In accordance with Section 953 of Title 49 of the Louisiana revised statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal, or amendment.

1. The effect on the stability of the family. We can discern no effect on the stability of the family.
2. The effect on the authority and rights of parents regarding the education and supervision of their children. We can discern no effect on the authority and rights of parents regarding the education and supervision of their children.
3. The effect on the functioning of the family. We can discern no effect on the functioning of the family.
4. The effect on family earnings and family budget. We can discern no effect on family earnings or family budget.
5. The effect on the behavior and personal responsibility of children. We can discern no effect on the behavior and personal responsibility of children.
6. The ability of the family or a local government to perform the function as contained in the proposed Rule. We can discern no effect on the ability of the family or a local government to perform the activity as contained in the proposed Rule.

Small Business Statement

In accordance with Section 965 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a regulatory flexibility analysis on the Rule proposed for adoption, repeal, or amendment. This will certify the agency has considered, without limitation, each of the following methods of reducing the impact of the proposed Rule on small businesses:

1. The establishment of less stringent compliance or reporting requirements for small businesses. There are no reporting requirements associated with the proposed amendments.
2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses. There are no deadlines for reporting requirements associated with the proposed amendments.
3. The consolidation or simplification of compliance or reporting requirements for small businesses. There are no reporting requirements associated with the proposed amendments.

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Pharmacy**

Penal Pharmacy (LAC 46:LIII.Chapter 18)

4. The establishment of performance standards for small businesses to replace design or operational standards required in the proposed rule. There are no design or operational standards in the proposed amendments.

5. The exemption of small businesses from all or any part of the requirements contained in the proposed Rule. The proposed amendments will provide alternative labeling standards for medications compounded or prepackaged by hospital pharmacies. There are no requirements relative to small businesses in the proposed amendments; therefore, no exemptions were considered.

Public Comments

Interested persons may submit written comments to Malcolm J Broussard, Executive Director, Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, LA 70809-1700. He is responsible for responding to inquiries regarding these proposed amendments.

Public Hearing

A public hearing on these proposed amendments is scheduled for Tuesday, February 28, 2012 at 9 a.m. in the board office. At that time, all interested persons will be afforded an opportunity to submit data, views, or arguments, either orally or in writing. The deadline for the receipt of all comments is 12 noon that same day.

Malcolm J Broussard
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Hospital Pharmacy

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is estimated that implementation of the proposed rule will cost the agency \$500 in FY 11-12, for printing costs.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no measurable impact on revenue collections for state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed amendments will provide alternative labeling standards for medications compounded or prepackaged by hospital pharmacies for their own use. In particular, the current labeling standard for medications prepackaged or compounded by pharmacies requires nine specific data elements. The proposed alternative labeling standard for hospital pharmacies contains seven data elements. The hospital pharmacy will be required to make a one-time change to its labeling process to implement the alternative labeling standard with potential labor and material costs. The Board of Pharmacy does not anticipate any additional costs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no discernable measurable effect on competition or employment in this state.

Malcolm J. Broussard
Executive Director
1201#033

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy hereby gives notice of its intent to adopt a new chapter of rules, Chapter 18, Penal Pharmacy. In particular, the new Rule will establish a new category of pharmacy permit for use in penal institutions owned and operated by governmental organizations. The Rule establishes the credentialing process as well as standards for the distribution of drugs and professional services within those pharmacies.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LIII. Pharmacists

Chapter 18. Penal Pharmacy

§1801. Penal Pharmacy Permit

A. A penal pharmacy permit shall be required to operate a pharmacy located within a penal institution, to provide medications and pharmacy care for offenders residing in that institution or another penal institution owned and operated by that governmental organization. The pharmacy in the penal institution may also provide medications and pharmacy care to offenders assigned to that institution and residing at home or another housing location.

B. In the event a pharmacy located outside a penal institution intends to provide medications and pharmacy care on a contractual basis to offenders residing in, or assigned to, a penal institution, that pharmacy shall first obtain a penal pharmacy permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1226.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:

§1803. Permit Application Procedures

A. Application for Initial Issuance of Permit

1. The applicant for a penal pharmacy permit shall complete the application form supplied by the board and submit it with the required attachments and appropriate fees, as set forth in R.S. 37:1184, to the board.

2. Once received by the board, an application for the permit shall expire one year thereafter. Fees attached to an expired application shall be forfeited by the applicant and deposited by the board.

3. The board shall not process applications received by facsimile, or that are incomplete, or submitted with the incorrect fees.

4. The applicant may be required to personally appear before the board or one of its committees prior to any decision on the permit application.

5. The applicant shall be required to submit to the criminal history record check process used by the board, unless waived by the board.

B. Application for Renewal of Permit

1. Without respect to the date of initial issuance, a penal pharmacy permit shall expire at midnight on

December 31 of every year, unless surrendered, suspended, or revoked sooner in accordance with the Pharmacy Practice Act or these rules.

2. A penal pharmacy shall not operate with an expired permit.

3. The pharmacy shall complete the renewal application form supplied by the board and submit it with any required attachments and appropriate fees on or before the expiration date.

4. The board shall not process applications received by facsimile, or that are incomplete, or submitted with the incorrect fees.

C. Application for Reinstatement of Expired Permit

1. The applicant shall complete an application form for this specific purpose supplied by the board and submit it with any required attachments and appropriate fees to the board.

2. The board shall not process applications received by facsimile, or that are incomplete, or submitted with the incorrect fees.

3. An application for the reinstatement of a permit which has been expired:

a. Less than one year may be approved by the board's administrative personnel.

b. More than one year but less than five years may be approved by a member of the board charged with such duties.

c. More than five years may only be approved by the full board following a hearing to determine whether the applicant is competent to operate the pharmacy and whether the reinstatement is in the public's best interest.

4. Applications requiring a reinstatement hearing shall be accompanied by payment of the administrative hearing fee authorized by R.S. 37:1184.

D. Application for Reinstatement of Suspended or Revoked Permit

1. The applicant shall complete an application form for this specific purpose supplied by the board and submit it with any required attachments and appropriate fees to the board.

2. The board shall not process applications received by facsimile, or that are incomplete, or submitted with the incorrect fees.

3. The application may only be approved by the full board following a hearing to determine whether the applicant is competent to operate the pharmacy and whether the reinstatement is in the public's best interest.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1226.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:

§1805. Maintenance of Permit

A. A penal pharmacy permit is valid only for the entity to whom it is issued and shall not be subject to sale, assignment or other transfer, voluntary or involuntary, nor shall a permit be valid for any premises other than the business location for which it is issued.

B. The owner of the pharmacy shall appoint a Louisiana-licensed pharmacist as the pharmacist-in-charge of the permit. The owner of the pharmacy and the pharmacist-in-charge shall comply with the provisions of §1105, Pharmacist-in-Charge of the board's rules.

C. A pharmacy contemplating permanent closure of its prescription department shall comply with the provisions of §1133, Pharmacy Closing Procedures of the board's rules.

D. A pharmacy contemplating a change in ownership shall comply with the provisions of §1135, Pharmacy Change of Ownership Procedures of the board's rules.

E. A pharmacy contemplating a change in location shall comply with the provisions of §1137, Pharmacy Change of Location Procedures of the board's rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1226.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:

§1807. Prescription Department Requirements

A. The prescription department of a penal pharmacy shall comply with the minimum specifications identified in §1103, Prescription Department Requirements of the board's rules.

B. To ensure adequate access to medications and pharmacy care, the prescription department of a penal pharmacy shall be open for business a minimum of 10 hours per week, with said business hours posted at the pharmacy entrance.

C. A pharmacist shall be on duty at all times during regular operating hours of the pharmacy. When the pharmacy is closed, a pharmacist shall be available for emergency calls.

D. In the absence of a pharmacist, there shall be no access to the prescription department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1226.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:

§1809. Drug Distribution Control

A. The pharmacist-in-charge shall be responsible for the safe and efficient procurement, receipt, storage, distribution, control, accountability, and patient administration and management of all drugs used in the penal institution. The administration and staff of the institution shall cooperate with the pharmacist-in-charge in meeting drug control requirements in ordering and accounting for drugs.

1. The pharmacist-in-charge shall maintain a written policy and procedure manual for the safe and efficient distribution of drug products and delivery of pharmacy care. A copy of the current version of the manual shall be available for board inspection upon request.

2. The pharmacist-in-charge shall be responsible for making and keeping pharmacy records in compliance with the provisions of §1119-1129 of the board's rules.

3. The procurement, storage, security, and recordkeeping of controlled substances shall be in compliance with the provisions of Chapter 27, Controlled Dangerous Substances of the board's rules.

B. The pharmacy may utilize automated medication systems, but only in compliance with Chapter 12, Automated Medication Systems of the board's rules.

C. The penal pharmacy located within a penal institution may utilize drug cabinets located outside the prescription department of that institution to provide access to a limited inventory of medications when the prescription department is closed.

1. A drug cabinet is intended solely for the proper and safe storage of needed drugs when the pharmacy is closed,

and such drugs shall be available for emergency use only by authorized institution personnel.

2. The drug cabinet shall be a securely constructed and locked enclosure located outside the prescription department ensuring access by authorized personnel only.

3. The pharmacist-in-charge shall be responsible for the selection and quantity of drugs to be maintained in the drug cabinet and shall maintain a perpetual inventory of any controlled dangerous substances stored therein. Medications shall be available in quantities sufficient only for immediate therapeutic needs.

4. Medications stored in a drug cabinet shall bear a legible label with the following minimum information:

- a. drug name, strength, and dosage form;
- b. name of manufacturer or distributor and their lot or batch number;
- c. expiration date, in compliance with the relevant standards from the United States Pharmacopeia (USP);
- d. for prepackaged medications, the pharmacy's lot number and initials of the pharmacist.

5. Documented orders from the medical practitioner and proof of use records shall be provided when any medications are removed from the drug cabinet.

6. The pharmacy shall inspect medications stored in a drug cabinet on a periodic basis, but no more than thirty days since the previous inspection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1226.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:

§1811 Definitions

A. As used in this Chapter, the following terms shall have the meaning ascribed to them in this Section.

Emergency Drug Kit (EDK)—a container holding designated emergency drugs which may be required to meet the immediate therapeutic needs of an offender.

Emergency Drugs—those drugs which may be required to meet the immediate therapeutic needs of an offender and which are not available from any other authorized source in sufficient time to prevent risk of harm to the offender because of a delay resulting from obtaining such medications from such other source.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1226.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:

§1813 Emergency Drug Kit Permit

A. A penal pharmacy located outside a penal institution intending to use one more emergency drug kits within the penal institution shall first obtain an EDK permit from the board.

B. Application for Initial Issuance of Permit

1. The penal pharmacy shall apply to the board for the permit.

2. The applicant shall complete the application form supplied by the board and submit it with the required attachments and appropriate fees, as set forth in R.S. 37:1184, to the board.

3. Once received by the board, an application for the permit shall expire one year thereafter. Fees attached to an expired application shall be forfeited by the applicant and deposited by the board.

4. The board shall not process applications received by facsimile, or that are incomplete, or submitted with the incorrect fees.

C. Application for Renewal of Permit

1. Without respect to the date of initial issuance, an EDK permit shall expire at midnight on June 30 of every year, unless relinquished, surrendered, suspended, or revoked sooner in accordance with the Pharmacy Practice Act or these rules.

2. An EDK shall not be maintained or used with an expired permit.

3. The penal pharmacy shall complete the renewal application form supplied by the board and submit it with any required attachments and appropriate fees on or before the expiration date.

4. The board shall not process applications received by facsimile, or that are incomplete, or submitted with the incorrect fees.

D. Application for Reinstatement of Expired Permit

1. The applicant shall complete an application form for this specific purpose supplied by the board and submit it with any required attachments and appropriate fees to the board.

2. The board shall not process applications received by facsimile, or that are incomplete, or submitted with the incorrect fees.

3. An application for the reinstatement of an EDK permit which has been expired:

a. less than one year may be approved by the board's administrative personnel;

b. more than one year but less than five years may be approved by a member of the board charged with such duties;

c. more than five years may only be approved by the full board following a hearing to determine whether the reinstatement of the permit is in the public's best interest.

4. Applications requiring a reinstatement hearing shall be accompanied by payment of the administrative hearing fee authorized by R.S. 37:1184.

E. Maintenance of Permit

1. EDK permits are specific to a penal institution and they are not transferable.

2. In the event multiple kits are required for a penal institution, a separate permit shall be required for each EDK.

3. The original EDK permit shall be displayed in the penal pharmacy supplying the EDK, and a copy of the permit shall be maintained in the room or area where the EDK is located.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1226.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:

§1815 Emergency Drug Kit Requirements

A. The EDK shall be tamper-evident, shall be maintained in a secure enclosure located within the penal institution, and shall be available for emergency use by authorized personnel only.

B. The EDK shall be clearly labeled to indicate it is an emergency drug kit, and further, the attached exterior label shall identify the inventory of contents as well as contact information for the penal pharmacy responsible for maintaining the kit.

C. Medications stored in an EDK shall bear a label with the following minimum information:

1. drug name;
2. dosage form;
3. drug strength;
4. name of manufacturer and/or distributor;
5. manufacturer's lot or batch number; and
6. expiration date, according to relevant standards from the United States Pharmacopeia (USP).

D. The EDK shall be stored in a proper environment for the preservation of the drugs contained therein, in compliance with the relevant USP standards. In the event federal or state laws or rules require storage outside the EDK for one or more drugs in the EDK, documentation shall be maintained with the EDK properly identifying this special storage requirement and the drug(s) affected.

E. The penal institution and penal pharmacy shall maintain policies and procedures to implement and maintain these requirements. These policies and procedures may be maintained in written or electronic format and shall be available for review by the board or its agents.

F. When an authorized prescriber issues an order for the administration of a drug contained within the EDK, the order and proof of use shall be delivered in written or electronic format to the penal pharmacy; further, such records shall contain the following minimum information:

1. name of offender;
2. drug name, strength, and quantity;
3. nature of the emergency;
4. time and date of administration;
5. name of prescriber authorizing the medication; and
6. name of person administering the medication.

G. The penal pharmacy shall inspect the EDK periodically, but in no event more than 30 days after the previous inspection. Proper documentation of these inspections, EDK inventory, and all records of use shall be maintained by the penal pharmacy and available for review by the board or its agents.

H. The EDK shall be available for inspection by the board or its agents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1226.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:

§1817. Drug Donations to Penal Pharmacies

A. A penal pharmacy may accept the donation of a prescription drug, except a controlled substance, previously dispensed to another patient provided the following procedures are satisfied:

1. the physical transfer of the donated drug shall be accomplished by an individual authorized to do so by the penal pharmacy;
2. an inventory list of the drugs being donated shall accompany the drugs received in the penal pharmacy; the list shall contain, at a minimum, the name and strength of the drug, the quantity received, and expiration date. The penal pharmacy receiving the donated drugs shall maintain this list as an acquisition record;
3. the penal pharmacy shall not knowingly accept the donation of any expired drugs. In the event expired drugs are received by a penal pharmacy, the pharmacist-in-charge shall destroy them as required by law;

4. the patient's name, prescription number, and any other identifying marks shall be obliterated from the packaging prior to its receipt in the penal pharmacy;

5. the drug name, strength, and expiration date shall remain on the medication package or label.

B. The pharmacist-in-charge of the penal pharmacy receiving donated drugs shall be responsible for determination of suitability of the drug product for reuse.

1. No product where integrity cannot be assured shall be accepted for re-dispensing by the pharmacist.

2. A re-dispensed prescription medication shall be assigned the expiration date stated on the package.

3. No product shall be re-dispensed more than one time.

C. Once accepted by the penal pharmacy, under no circumstances may the donated drugs be transferred to another location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1226.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:

§1819. Medication Use Procedures

A. The pharmacist shall review the practitioner's medical order or prescription prior to dispensing or otherwise provide access to the initial dose of the medication, except in cases of emergency.

B. All drugs dispensed by the pharmacy or held for administration to offenders at the institution shall be packaged in appropriate containers that comply with the relevant standards of the USP.

C. The compounding of drug preparations shall comply with the relevant standards of the USP, as well as the provisions of §2531-2537 of the board's rules.

D. All drugs dispensed by the pharmacy, intended for use within the penal institution, shall be labeled as to identify the offender's name and location as well as the drug name and strength. Further, compounded preparations shall include the expiration date or beyond-use date, initials of the preparer, and initials of the pharmacist performing the final check on the label.

E. Drugs dispensed by the penal pharmacy may be returned to that penal pharmacy for re-use, in accordance with good professional practice procedures, subject to the following limitation.

1. Drugs returned to the penal pharmacy for re-use shall not be further distributed to another entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1226.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:

Family Impact Statement

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal, or amendment.

1. The effect on the stability of the family. We can discern no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. We can discern no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family. We can discern no effect on the functioning of the family.

4. The effect on family earnings and family budget. We can discern no effect on family earnings or family budget.

5. The effect on the behavior and personal responsibility of children. We can discern no effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in the proposed Rule. We can discern no effect on the ability of the family or a local government to perform the activity as contained in the proposed Rule.

Small Business Statement

In accordance with Section 965 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a regulatory flexibility analysis on the Rule proposed for adoption, repeal, or amendment. This will certify the agency has considered, without limitation, each of the following methods of reducing the impact of the proposed Rule on small businesses:

1. The establishment of less stringent compliance or reporting requirements for small businesses. There are no reporting requirements associated with the proposed Rule.

2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses. There are no deadlines for reporting requirements associated with the proposed Rule.

3. The consolidation or simplification of compliance or reporting requirements for small businesses. There are no reporting requirements associated with the proposed Rule.

4. The establishment of performance standards for small businesses to replace design or operational standards required in the proposed Rule. There are no specific design standards in the proposed rule, so the pharmacy is able to establish its own prescription department design, as long as the security standards are achieved. The existing operational standards already contain an allowance for prescription departments operated as small businesses to be open for a minimum of ten hours per week.

5. The exemption of small businesses from all or any part of the requirements contained in the proposed Rule. The board's rules already contain provisions for pharmacies operated by small businesses; the proposed Rule continues those provisions for those pharmacies providing prescription drugs under contract to offenders within penal institutions. The board believes no further exemptions are in the public's best interest.

Public Comments

Interested persons may submit written comments to Malcolm J Broussard, Executive Director, Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, LA 70809-1700. He is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Tuesday, February 28, 2012 at 9 a.m. in the Board office. At that time, all interested persons will be afforded an opportunity to submit data, views, or arguments, either orally or in writing. The deadline for the receipt of all comments is 12 noon that same day.

Malcolm J Broussard
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Penal Pharmacy

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is estimated that implementation of the proposed rule will cost the agency \$500 in FY 11-12, for printing costs.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

We can discern no measurable impact on revenue collections for state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule will establish a separate classification of pharmacy permit for those pharmacies operating within penal institutions owned by a governmental organization, or in privately owned pharmacies serving offenders in government-owned penal institutions under contract. Since both of those types of pharmacies already possess pharmacy permits under the "institutional" classification of the Administrative Code, there are no estimated additional costs attributable to the new category of permit.

The only significant change to the rule will be to permit penal pharmacies to recycle unused prescription drugs it dispenses to its own offenders, subject to prevailing professional practice standards, instead of the current requirement to destroy all unused prescription drugs. The recycling of unused prescription drugs will enable the pharmacy to defer planned purchases of new prescription drugs, resulting in savings. Depending on the types and amounts of drugs purchased by the pharmacy, the savings attributable to the proposed rule could be substantial; however, we are not able to quantify or estimate that potential.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

We can discern no measurable effect on competition or employment in this state.

Malcolm J. Broussard
Executive Director
1201#031

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Board of Pharmacy

Pharmacist-in-Charge (LAC 46:LIII.1105)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy hereby gives notice of its intent to amend §1105, Pharmacist-in-Charge, of its rules. In particular, the proposed amendment will impose a new two-year practice requirement on the qualifications required of a pharmacist to accept an appointment as the pharmacist-in-charge of a Louisiana-licensed pharmacy, and in addition, will require the personal presence of the pharmacist-in-charge for a minimum period of time.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part LIII. Pharmacists

Chapter 11. Pharmacies

Subchapter A. General Requirements

§1105. Pharmacist-in-Charge

A. The opportunity to accept an appointment as the Pharmacist-in-Charge (PIC) of a pharmacy is a professional privilege. The following requirements are attached to a PIC privilege.

1. The acquisition of the PIC privilege shall require:
 - a. possession of an active Louisiana pharmacist license;
 - b. active pharmacy practice for a minimum of two years under the jurisdiction of any board of pharmacy in the United States; and
 - c. the completion of the Affidavit of Responsibility and Duties described below.

2. The PIC shall be present and practicing at the pharmacy for which he holds the PIC position no less than 20 hours per week during the pharmacy's ordinary course of business. In the event the pharmacy's normal hours of business are less than 20 hours per week the PIC shall be present and practicing at least 50 percent of the normal business hours.

B. An initial and renewal pharmacy permit application shall designate and identify the licensed pharmacist-in-charge.

C. Authority and Accountability. The pharmacist-in-charge shall be ultimately responsible for complete supervision, management, and compliance with all federal and state pharmacy laws and regulations pertaining to the practice of pharmacy of the entire prescription department. This responsibility necessarily includes accountability for any violation involving federal or state laws or regulations occurring within the prescription department supervised by a pharmacist-in-charge.

D. Policy and Procedure Manual. The pharmacist-in-charge shall be responsible for the implementation of policies and procedures regarding quality pharmacy services including drug control, distribution, patient compliance accountability, inspection, and record keeping.

E. Circumvention. It is a violation of the pharmacy permit for any person to subvert the authority of the pharmacist-in-charge by impeding the management of the prescription department in the compliance of federal and state pharmacy laws and regulations.

F. Records. The pharmacist-in-charge shall be responsible for the proper maintenance of all prescription records. This necessarily includes electronic prescription records and the system's compliance and capacity to produce the required records.

G. Recall. The pharmacist-in-charge shall be responsible for the implementation of a recall procedure that can be readily activated to assure patient safety.

H. Discontinued and Outdated Drugs. The pharmacist-in-charge shall be responsible for the implementation of policies and procedures to ensure that discontinued or outdated drugs, or containers with worn, illegible, or missing labels are withdrawn from the pharmacy inventory.

I. Change of Pharmacist-in-Charge. Written notice to the board shall be required when the pharmacist-in-charge designation for a pharmacy has changed.

1. The permit holder shall notify the board within 10 days of the prior pharmacist-in-charge's departure date. The permit holder shall designate a new pharmacist-in-charge within 10 days of the departure of the prior pharmacist-in-charge.

2. The new pharmacist-in-charge shall afford the board written notice of his newly designated pharmacist-in-charge status within 10 days of the departure of the prior pharmacist-in-charge.

3. A pharmacist-in-charge who voluntarily leaves a pharmacy shall give written notice to the board and the owner of the permit at least ten days prior to this voluntary departure, unless replaced in a shorter period of time.

J. Affidavit of Responsibility and Duties. The designated pharmacist-in-charge shall sign an affidavit on a form supplied by the board indicating his understanding and acceptance of the duties and responsibilities of a pharmacist-in-charge. This notarized document shall be submitted to the board for inclusion in the pharmacy's record in the board office.

K. A pharmacist shall not hold a pharmacist-in-charge position at more than one pharmacy permit, unless approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:1310 (October 1997), amended LR 29:2088 (October 2003), effective January 1, 2004, LR 38:

Family Impact Statement

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a family impact statement on the Rule proposed for adoption, repeal, or amendment.

1. The effect on the stability of the family. We can discern no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. We can discern no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family. We can discern no effect on the functioning of the family.

4. The effect on family earnings and family budget. We can discern no effect on family earnings or family budget.

5. The effect on the behavior and personal responsibility of children. We can discern no effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in the proposed Rule. We can discern no effect on the ability of the family or a local government to perform the activity as contained in the proposed Rule.

Small Business Statement

In accordance with Section 965 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a regulatory flexibility analysis on the Rule proposed for adoption, repeal, or amendment. This will certify the agency has considered, without limitation, each of the following

methods of reducing the impact of the proposed Rule on small businesses:

1. The establishment of less stringent compliance or reporting requirements for small businesses. The proposed amendment seeks to require at least two years of experience for any pharmacist desiring to accept an appointment as the pharmacist-in-charge of a Louisiana-licensed pharmacy, and further, the rule seeks to require a minimum amount of time the pharmacist-in-charge shall be personally present in the pharmacy, i.e., at least twenty hours per week. The proposed amendment specifically provides an exception for small businesses that are not open at least twenty hours per week, wherein the minimum amount of time is defined as fifty percent of the time the pharmacy is open.

2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses. There are no schedules or deadlines for reporting requirements in the proposed amendment.

3. The consolidation or simplification of compliance or reporting requirements for small businesses. There are no reporting requirements in the proposed amendment.

4. The establishment of performance standards for small businesses to replace design or operational standards required in the proposed rule. There are no design standards in the proposed amendment. There is an alternative operational standard for small businesses in the proposed amendment.

5. The exemption of small businesses from all or any part of the requirements contained in the proposed rule. The proposed amendment seeks to remedy an apparent deficit in the competency of newly-licensed pharmacists to manage pharmacy practice sites by requiring at least two years of practice experience prior to accepting an appointment as the pharmacist-in-charge of a Louisiana-licensed pharmacy. Since the competent management of a pharmacy has a direct impact on the public's health and safety, the board sought to strike a balance between a longer (five year) and shorter (one year) option. The Board believes an exemption from the competency standard is not in the public's best interest. With respect to the minimum amount of time required for the pharmacist-in-charge to be personally present in the pharmacy, the proposed amendment contains an alternative standard for those pharmacies open less than twenty hours per week.

Public Comments

Interested persons may submit written comments to Malcolm J Broussard, Executive Director, Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, LA 70809-1700. He is responsible for responding to inquiries regarding this proposed amendment.

Public Hearing

A public hearing on this proposed Rule change is scheduled for Tuesday, February 28, 2012 at 9 a.m. in the Board office. At that time, all interested persons will be afforded an opportunity to submit data, views, or arguments, either orally or in writing. The deadline for the receipt of all comments is 12 noon that same day.

Malcolm J Broussard
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Pharmacist-in-Charge

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is estimated that implementation of the proposed rule will cost the agency \$500 in FY 11-12, for printing costs.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

We can discern no measurable impact on revenue collections for state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The Board proposes to amend §1105 of its rules to require any pharmacist have at least two years of practice experience prior to accepting an appointment as the pharmacist-in-charge of a Louisiana-licensed pharmacy, and further, to require the pharmacist-in-charge to be personally present in the pharmacy for which he serves as the pharmacist-in-charge for at least twenty hours per week.

The pharmacists affected by the proposed rule would be newly-licensed pharmacists with less than two years experience. They could accept a staff member appointment but not a pharmacist-in-charge appointment. To the extent any of the management level positions provide additional compensation, newly-licensed pharmacists would have a delayed eligibility for that additional compensation.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

We can discern no measurable effect on competition or employment.

Malcolm J. Broussard
Executive Director
1201#029

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Board of Pharmacy

Remote Processing of Medical Orders
(LAC 46:LIII.1143 and 1525)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy hereby gives notice of its intent to amend §1143, Remote Processing of Medical Orders or Prescription Drug Orders, and to repeal §1525, Remote Processing of Medical Orders, of its rules. In particular, the proposed amendments will permit hospital pharmacies to engage in the remote processing of medical orders at any time during the day.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LIII. Pharmacists

Chapter 11. Pharmacies

Subchapter D. Off-Site Services

§1143. Remote Processing of Medical Orders or Prescription Drug Orders

A. - A.1.b. ...

2. A contract or agreement for remote processing services shall not relieve the on-site pharmacy from employing or contracting with a pharmacist to provide routine pharmacy services. The activities authorized by this section are intended to supplement pharmacy services and are not intended to eliminate the need for an on-site pharmacy or pharmacist.

B. - C.2.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 33:1132 (June 2007), amended LR 38:

Chapter 15. Hospital Pharmacy

§1525. Remote Processing of Medical Orders

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 33:1132 (June 2007), repealed LR 38:

Family Impact Statement

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a family impact statement on the Rule proposed for adoption, repeal, or amendment.

1. The effect on the stability of the family. We can discern no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. We can discern no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family. We can discern no effect on the functioning of the family.

4. The effect on family earnings and family budget. We can discern no effect on family earnings or family budget.

5. The effect on the behavior and personal responsibility of children. We can discern no effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in the proposed Rule. We can discern no effect on the ability of the family or a local government to perform the activity as contained in the proposed Rule.

Small Business Statement

In accordance with Section 965 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a regulatory flexibility analysis on the Rule proposed for adoption, repeal, or amendment. This will certify the agency has considered, without limitation, each of the following methods of reducing the impact of the proposed Rule on small businesses.

1. The establishment of less stringent compliance or reporting requirements for small businesses. There are no reporting requirements associated with the proposed amendments.

2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses. There are no deadlines for reporting requirements associated with the proposed amendments.

3. The consolidation or simplification of compliance or reporting requirements for small businesses. There are no

reporting requirements associated with the proposed amendments.

4. The establishment of performance standards for small businesses to replace design or operational standards required in the proposed Rule. There are no design or operational standards in the proposed amendments.

5. The exemption of small businesses from all or any part of the requirements contained in the proposed rule. The proposed amendments will permit hospital pharmacies to engage in the remote processing of medical orders at any time of the day. There are no requirements relative to small businesses in the proposed amendments; therefore, no exemptions were considered.

Public Comments

Interested persons may submit written comments to Malcolm J Broussard, Executive Director, Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, LA 70809-1700. He is responsible for responding to inquiries regarding these proposed amendments.

Public Hearing

A public hearing on these proposed amendments is scheduled for Tuesday, February 28, 2012 at 9 a.m. in the board office. At that time, all interested persons will be afforded an opportunity to submit data, views, or arguments, either orally or in writing. The deadline for the receipt of all comments is 12 noon that same day.

Malcolm J Broussard
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Remote Processing of Medical Orders

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is estimated that implementation of the proposed rule will cost the agency \$500 in FY 11-12, for printing costs.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

We can discern no measurable impact on revenue collections for state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed amendments will permit hospital pharmacies to engage in the remote processing of medical orders at any time of the day, instead of the current restriction to when one of the pharmacies is closed for the day. To the extent that the expansion of remote processing services require any additional software or hardware costs or provide any additional economic benefits to the hospital pharmacy from a reduced number of pharmacists, then the proposed amendment could increase those costs or economic benefits. However, the fiscal impact from this rule is not anticipated to be significant because it merely increases the number of hours per day a pharmacy could use such services. The Board is unable to estimate or quantify any such costs or benefits, as they will depend on the current status and needs of each pharmacy.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

We can discern no measurable effect on competition or employment in this state.

Malcolm J. Broussard
Executive Director
1201#034

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Professional Services Program Supplemental Payments for
Tulane Professional Practitioners
(LAC 50:IX.15155)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:IX.15155 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions in the Professional Services Program to provide supplemental payments to physicians and other eligible professional service practitioners employed by state-owned or operated entities (*Louisiana Register*, Volume 32, Number 6).

The Department of Health and Hospitals, Bureau of Health Services Financing now proposes to amend the provisions governing the Professional Services Program in order to provide supplemental payments to physicians and other eligible professional service practitioners affiliated with the Tulane University School of Medicine located in New Orleans, LA.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part IX. Professional Services Program

Subpart 15. Reimbursement

Chapter 151. Reimbursement Methodology

Subchapter F. Supplemental Payments

§15155. Qualifying Criteria—Professional Services of Practitioners Affiliated with Tulane School of Medicine.

A. Effective for dates of service on or after July 1, 2012, physicians and other eligible professional service practitioners who are employed by a physician group affiliated with Tulane University School of Medicine located in the city of New Orleans may qualify for supplemental payments for services rendered to Medicaid recipients. To qualify for the supplemental payment, the physician or professional service practitioner must be:

1. licensed by the state of Louisiana;
2. enrolled as a Louisiana Medicaid provider; and
3. identified by Tulane University School of Medicine

as a physician or other professional service practitioner that is employed by, or under contract to provide services for that entity.

B. The following professional services practitioners shall qualify to receive supplemental payments:

1. physicians;
2. physician assistants;
3. certified registered nurse practitioners; and
4. certified registered nurse anesthetists.

C. The supplemental payment shall be calculated in a manner that will bring payments for these services up to the community rate level.

1. For purposes of these provisions, the community rate shall be defined as the rates paid by commercial payers for the same service.

D. The private physician group shall periodically furnish satisfactory data for calculating the community rate as requested by the department.

E. The supplemental payment amount shall be determined by establishing a Medicare to community rate conversion factor for the private physician group. At the end of each quarter, for each Medicaid claim paid during the quarter, a Medicare payment amount will be calculated and the Medicare to community rate conversion factor will be applied to the result. Medicaid payments made for the claims paid during the quarter will then be subtracted from this amount to establish the supplemental payment amount for that quarter.

F. The supplemental payments shall be made on a quarterly basis and the Medicare to community rate conversion factor shall be recalculated at least every three years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Implementation of these provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability, and autonomy as described in R.S. 49:972.

Public Comments

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Tuesday, February 28, 2012 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Bruce D. Greenstein
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Professional Services Program
Supplemental Payments for Tulane
Professional Practitioners**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will have no fiscal impact for FY 11-12, but will result in an estimated increase in expenses to the state of approximately \$980,200 for FY 12-13 and \$903,777 for FY 13-14. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 11-12 for the state's administrative expense for promulgation of this proposed rule and the final rule.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will have no impact on revenue collections in FY 11-12, but will result in an estimated increase in federal revenue collections by approximately \$2,444,678 for FY 12-13 and \$2,623,847 for FY 13-14. It is anticipated that \$164 will be expended in FY 11-12 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

This proposed rule amends the provisions governing the Professional Services Program to establish supplemental payments for physicians and other professional services practitioners affiliated with Tulane University School of Medicine for services rendered to Medicaid recipients (approximately 64,350 service units annually). It is anticipated that implementation of this proposed rule will have no fiscal impact in FY 11-12, but will increase programmatic expenditures in the Medicaid Program by approximately \$3,424,878 for 12-13 and \$3,527,624 for FY 13-14.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

It is anticipated that there will be no effect on competition and employment as a result of the implementation of this proposed rule.

Don Gregory
Medicaid Director
1201#067

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Insurance
Office of the Commissioner**

**Regulation 100—Coverage of Prescription
Drugs through a Drug Formulary
(LAC 37:XIII.Chapter 141)**

Pursuant to the authority granted in R.S. 22:11, R.S. 22:1068(F) and R.S. 22:1074(F), and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Insurance proposes to promulgate Regulation 100. The purpose of Regulation 100 is to implement Act 350 of the 2011 Regular Session of the Louisiana Legislature pertaining to the coverage of prescription drugs through a drug formulary as set forth in R.S. 22:1060.1 et seq., which provides for the continuation of drug coverage and notice to enrollees of modifications of drugs on the drug formularies

covered by a health insurance issuer. This intended action complies with the statutory law administered by the Department of Insurance.

**Title 37
INSURANCE**

Part XIII. Regulations

**Chapter 141. Regulation 100—Coverage of
Prescription Drugs through a Drug
Formulary**

§14101. Purpose

A. The purpose of Regulation 100 is to implement Act 350 of the 2011 Regular Session of the Louisiana Legislature pertaining to the coverage of prescription drugs through a drug formulary as set forth in R.S. 22:1060.1 et seq. which provides for the continuation of drug coverage and notice to enrollees regarding drug formularies covered by a health insurance issuer as well as any modifications made thereto. The purpose of Regulation 100 is to clarify the requirements and notice forms now mandated by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, R.S. 22:1068(F) and R.S. 22:1074(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

§14103. Authority

A. Regulation 100 is promulgated pursuant to the authority granted in R.S. 22:11, R.S. 22:1068F and R.S. 22:1074F.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, R.S. 22:1068(F) and R.S. 22:1074(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

§14105. Applicability and Scope

A. Regulation 100 applies to all health insurance issuers as well as health maintenance organizations as defined by R.S.22:1060.1(6).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, R.S. 22:1068(F) and R.S. 22:1074(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

§14107. Definitions

A. Definitions. As used in Regulation 100, the following terms shall have the meaning or definition as indicated herein.

Commissioner—commissioner of insurance for the state of Louisiana.

Enrollee—any individual, including a dependent, who is enrolled or insured by a health insurance issuer under a health benefit plan.

Policy Form—an insurance contractual agreement delineating the terms, provisions and conditions of a particular insurance product. It includes certificates of coverage and any other evidence of coverage, subscriber agreements or application forms where written application is required and is to be attached to the policy or be a part of the contract, and any health and accident or health maintenance organization rider or endorsement form.

Particular Product—a basic insurance policy form delineating the terms, provisions and conditions of a specific type of coverage under a particular type of contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, R.S. 22:1068(F) and R.S. 22:1074(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

§14109. Required Notices

A. There shall be three different and distinct types of notice that a health insurance issuer is required to provide to every applicable enrollee. Each notice shall be filed with and approved by the Department of Insurance prior to use in Louisiana.

B. Notice and Disclosure of Drug Formulary Pursuant to R.S. 22:1060.2(A)(1)(e). A health insurance issuer shall file a "Notice and Disclosure of Drug Formulary" form with the Department of Insurance as a part of its coverage documentation. The "Notice and Disclosure of Drug Formulary" shall contain all of the information enumerated in R.S. 22:1060.2. A health insurance issuer shall submit this form for approval by the commissioner. Once the form is approved by the commissioner, the health insurance issuer shall only utilize said form. A health insurance issuer shall maintain written evidence such as a record, report or data compilation of enrollees who request disclosure or information about any specific drug that is included in a formulary. The written evidence such as a record, report, or data compilation shall include the name of the enrollee, the date of request, the date of response by the health insurance issuer and the specific drug requested. A health insurance issuer shall provide a copy of the written evidence such as a record, report or data compilation as described herein to the commissioner within 15 days of written request by the commissioner.

C. Notice that Enrollee Has Right to Continuation of Coverage Pursuant to R.S. 22:1060.3. A health insurance issuer shall notify an enrollee as a part of coverage documentation that the enrollee shall have the right to continue the coverage of any prescription drug that was approved or covered by the health insurance issuer, and that the coverage of such prescription drug shall be at the contracted benefit level until the renewal of the enrollee's current plan. A health insurance issuer shall maintain written evidence such as a record, report or data compilation of enrollees who request continuation of coverage and the name of the specific drug. The written evidence such as a record, report, or data compilation shall include the name of the enrollee, the date of request, the date of response by the health insurance issuer and the name of the specific drug requested. A health insurance issuer shall provide a copy of the written evidence such as a record, report or data compilation as described herein to the commissioner within 15 days of written request by the commissioner.

D. Notice of Modification-Group Market Pursuant to R.S. 22:1068(D)(3) and Individual Market Pursuant to R.S. 22:1074(D)(3). A "Notice of Modification of Benefit Coverage or Drug Coverage of a Particular Product" form is required to contain the information required in R.S. 22:1068(D)(3) and 22:1074(D)(3). Such form used by a health insurance issuer shall be approved by the commissioner and no form may be used until approved by the commissioner. For group policies, such notice shall be delivered to the affected covered small group or large group employer and all enrollees at the last known address no later than the sixtieth day before any modification of benefit coverage or drug coverage of a particular product is to become effective. For individual policies, such notice shall be delivered to each affected individual at the last known address no later than the sixtieth day before any modification

of benefit coverage or drug coverage of a particular product is to become effective.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, R.S. 22:1068(F) and R.S. 22:1074(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

§14111. Requirements for the Modification Affecting Drug Coverage

A. A modification affecting drug coverage shall mean any of the following:

1. removing a drug from a formulary;
2. adding a requirement that an enrollee receive prior authorization for a drug;
3. imposing or altering a quantity limit for a drug;
4. imposing a step-therapy restriction for a drug;
5. moving a drug to a higher cost-sharing tier, unless a generic alternative is available.

B. A health insurance issuer shall submit a modification affecting drug coverage for approval by the commissioner 120 days prior to the renewal date of the policy form as to those modifications enumerated in R.S. 22:1061(5) and set forth in §14111.A herein. Once the modification affecting drug coverage is approved by the commissioner, a health insurance issuer shall provide the notice of modification affecting drug coverage as provided for in R.S. 22:1068(D)(3) and R.S. 22:1074(D)(3) and shall only then have the authority to modify the policy or contract of insurance at the renewal of the policy or contract of insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, R.S. 22:1068(F) and R.S. 22:1074(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

§14113. Enrollee's Right to Appeal Adverse Determination

A. The refusal of a health insurance issuer to provide benefits to an enrollee for a prescription drug is an adverse determination for the purposes of Subpart F of Part III of Chapter 4 of the Louisiana Insurance Code, R.S. 22:1121 et seq., relative to medical necessity review organizations, if each of the following conditions is met.

1. The drug is not included in a drug formulary used by the health benefit plan.
2. The enrollee's physician or other authorized prescriber has determined the drug is medically necessary.

B. An enrollee may appeal the adverse determination pursuant to subpart F of part III of chapter 4 of the Louisiana Insurance Code, R.S. 22:1121 et seq., relative to medical necessity review organizations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, R.S. 22:1068(F) and R.S. 22:1074(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

§14115. Requirements for Modifying a Group Insurance Product

A. Pursuant to R.S. 22:1068, a health insurance issuer may modify its drug coverage offered to a group health plan if each of the following conditions is met.

1. The modification occurs at the time of coverage renewal.
2. The modification is approved by the commissioner.
3. The modification is consistent with state law.

4. The modification is effective on a uniform basis among all small or large employers covered by that group health plan.

5. The health insurance issuer, on the form approved by the Department of Insurance, notifies the small or large employer group and each enrollee therein of the modification no later than the sixtieth day before the date the modification is to become effective.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 and R.S. 22:1068(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

§14117. Requirements for Modifying an Individual Insurance Product

A. Pursuant to R.S. 22:1074, a health insurance issuer may modify its drug coverage offered to individuals if each of the following conditions is met.

1. The modification occurs at the time of coverage renewal.

2. The modification is approved by the commissioner.

3. The modification is consistent with state law.

4. The modification is effective on a uniform basis among all individuals with that policy form.

5. The health insurance issuer, on a form approved by the Department of Insurance, notifies each affected individual of the modification no later than the sixtieth day before the date the modification is to become effective.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 and R.S. 22:1074(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

§14119. Modification Affecting Drug Coverage; Approval by the Commissioner

A. To facilitate the ability of the commissioner to comply with his statutory duty, the commissioner shall have the authority to enter into a contract with any person or entity he deems applicable, relevant and/or appropriate to provide advice and/or make a recommendation to the commissioner regarding whether he should approve or deny any modification affecting drug coverage that requires prior approval from the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, R.S. 22:1068(F) and R.S. 22:1074(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

Family Impact Statement

The proposed Regulation 100, LAC 37:XIII., Chapter 141 titled Coverage of Prescription Drugs Through a Drug Formulary should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on: the stability of the family; the authority and rights of parents regarding the education and supervision of their children; the functioning of the family; family earnings and family budget; the behavior and personal responsibility of the children; or the ability of the family or a local government to perform the function as contained in the proposed Regulation 100.

Public Comments

A public hearing on this proposed Regulation 100 will be held on Monday, February 27, 2012, at 10 a.m., in the Plaza Hearing Room of the Department of Insurance located in the Poydras Building, 1702 North Third Street, Baton Rouge,

LA. Interested persons may make comments at the public hearing or by writing to Claire Lemoine, Chief Health Attorney, Department of Insurance, P. O. Box 94214, Baton Rouge, LA 70804-9214. Comments will be accepted through the close of business, 4:30 p.m., Monday, February 27, 2012. No preamble concerning the proposed Regulation 100 is available.

Small Business Statement

The impact of the proposed Regulation 100 on small businesses as identified in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The department, consistent with the health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Regulation that will accomplish the objectives of the applicable statutes while minimizing the adverse impact of the proposed regulation on small businesses. The proposed Regulation 100 should have no measureable impact on small businesses; therefore, will have no less intrusive or less costly alternative methods.

James H. Donelon
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Regulation 100—Coverage of Prescription Drugs through a Drug Formulary

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will result in a minimal increase in state expenditures. The purpose of the proposed regulation is to implement Act 350 of the 2011 Regular Session of the Louisiana Legislature, pertaining to the coverage of prescription drugs through a drug formulary. To implement this mandate, an increase in professional service contract expenditures will result. These professional service contracts will be absorbed in the existing operating budget of the LDI.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated direct material effect on revenue collections of state or local governmental units as a result of the proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no anticipated costs to directly affected persons or non-governmental groups. However, the health insurance issuer is now required to provide notice of drug modification to every applicable enrollee. There may be an indeterminable operating cost increase to the issuer to provide these notices dependent upon the frequency of formulary changes; however, it will be an economic benefit to the enrollee to receive such notice.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated direct material effect on competition and employment as a result of the proposed rule.

Shirley D. Bowler
Deputy Commissioner
1201#078

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections Liquefied Petroleum Gas Commission

Liquefied Petroleum Gas (LAC 55:IX.Chapters 1-15)

Under the authority of R.S. 40:1846, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Liquefied Petroleum Gas Commission gives notice that rulemaking procedures have been initiated to repeal and re-enact the liquefied petroleum gas commission regulations, LAC 55:IX. The proposed rule amendment reflects changes adopted by the Commission pursuant to updates to the National Fire Protection Association's Liquefied Petroleum Gas Code 58, 2008 edition and the National Fuel Gas Code 54, 2009 edition. The proposed rule changes also make technical changes to improve readability, codify current practices by the Commission regarding utilization of its statutory authority to regulate the propane industry, repeal provisions for certain permits which are no longer issued by the Commission, and permit public website notification of non-compliance in lieu of a certified letter to all dealers.

Title 55

PUBLIC SAFETY

Part IX. Liquefied Petroleum Gas

Chapter 1. General Requirements

Editor's Note: This Chapter applies to all classes of permits.

Subchapter A. New Dealers

§101. Prerequisite

A. As a prerequisite to engage in the liquefied petroleum gas business in the state of Louisiana, an applicant shall first comply with the applicable rules and regulations of the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended LR 38:

§103. Definitions

A. The following terms, as used in this Part, have the meanings listed below:

Appliance—any device that utilizes gas as a fuel or raw material to produce light, heat, power, refrigeration, or air conditioning.

Applicant—a person, firm, or corporation who has applied for a permit or registration with the Liquefied Petroleum Gas Commission.

Approved—approved by or acceptable to the authority having jurisdiction. This normally means that equipment or materials that are listed or labeled have been specifically approved by the authority having jurisdiction.

ASME—American Society of Mechanical Engineers.

Authority Having Jurisdiction (AHJ)—the organization, office, or individual responsible for approving equipment, an installation, or a procedure. In Louisiana the AHJ is the Liquefied Petroleum Gas Commission, the Office of the Director of the Liquefied Petroleum Gas Commission.

Cargo Tank—a container used to transport liquefied petroleum gas over a highway as liquid cargo, either mounted on a conventional truck chassis or as an integral part of a transporting vehicle in which the container

constitutes in whole, or in part, the stress member used as a frame.

CETP—Certified Employee Training Program.

Commission—Louisiana Liquefied Petroleum Gas Commission.

Container—any vessel, including cylinders, tanks, portable tanks, and cargo tanks used for the transporting or storing of liquefied petroleum gas.

Dealer or Permit Holder—any person, firm, or corporation who holds a permit or registration to enter into any phase of the liquefied petroleum gas business in the state of Louisiana.

DOT—the United States Department of Transportation.

End User—any person, firm, or corporation which has the use of or legal authority or control over any system which utilizes liquefied petroleum gas.

Installation—when used in the context of an existing thing, the same as system or liquefied petroleum gas system (see definition of *system* or *liquefied petroleum gas system*).

Installation—when used in the context of an action, the art of installing or setting up for use or service.

Labeled—equipment or materials to which has been attached a label, symbol, or other identifying mark of an organization that is acceptable to the authority having jurisdiction and concerned with product evaluation that maintains periodic inspection of production of labeled equipment or materials and by whose labeling manufacturer indicates compliance with appropriate standards or performance in a specified manner.

Leak Check—operation performed on a complete gas piping system and connected equipment prior to placing it into operation following initial installation and pressure testing or interruption of gas supply or out-of-gas situation or first time service of a new customer to verify that the system does not leak.

Liquefied Petroleum Gases—those gases derived from petroleum or natural gas, and are herein defined as those in the gaseous state at normal atmospheric temperature and pressure, and those maintained in liquid state at normal atmospheric temperature by means of suitable pressure. Those gases having a vapor pressure not exceeding that allowed for commercial propane composed predominantly of the following hydrocarbons, either by themselves or as mixtures: propane, propylene, butane (normal butane or iso butane), and butylenes. This definition shall not include acetylene as a regulated gas.

Listed—equipment or materials included in a list published by an organization acceptable to the authority having jurisdiction and concerned with product evaluation that maintains periodic inspection of production of listed equipment or materials and whose listing states either that the equipment or material meets appropriate standards or has been listed and found suitable for use in a specified manner.

Materially Affect Safety—any action or inaction that significantly and adversely affects the public health, safety or welfare, whether caused by deliberate act or negligence.

Mobile Air Conditioning System—mechanized vapor compression equipment which is used to cool the driver's or passenger's compartment of any motor vehicle.

New Dealer—any person, firm, or corporation that does not hold a permit or registration to engage in the liquefied petroleum gas business as of the date of their application.

Office of the Director—the office of the Executive Director of the Louisiana Liquefied Petroleum Gas Commission.

Places of Public Assembly—places where the egress is open to the public. This definition includes, but is not limited to, bars, restaurants, service stations, grocery stores, schools, churches, hospitals, sales offices, nursing homes, and other similar places. This definition is not intended to include places that limit public access.

Pressure Test—an operation performed to verify the gas tight integrity of gas piping following its installation or modification.

Qualified Agency—any person, firm, or corporation which is engaged in and is responsible for the installation or replacement of liquefied petroleum gas piping, tanks, containers, the connection, installation, repair, or servicing of equipment or appliances and is experienced in such work and familiar with all precautions required and has complied with all the requirements of the authority having jurisdiction.

Reseller or Wholesaler—

- a. a person, firm, or corporation who:
 - i. holds title or ownership of liquefied petroleum gas as it leaves the facility or plant of a manufacturer of liquefied petroleum gas, or the facility or plant of a manufacturer of products of which liquefied petroleum gas form a component part, or of a commercial storage facility;
 - ii. transfers such title or ownership to another without substantially changing the form of the liquefied petroleum gas;
 - iii. transfers such title or ownership to another reseller, or to a liquefied petroleum gas dealer for sale at retail;
- b. this definition shall include a manufacturer of liquefied petroleum gas or a manufacturer of products of which liquefied petroleum gas forms a component part, if title or ownership transfers directly from the manufacturer to a liquefied petroleum gas dealer for sale at retail;
- c. this definition shall not include a manufacturer of liquefied petroleum gas or a manufacturer of products of which liquefied petroleum gas forms a component part, if title or ownership transfers to another manufacturer of liquefied petroleum gas, to another manufacturer of products of which liquefied petroleum gas forms a component part or to a reseller.

Retail Dealer—any person, firm, or corporation who normally sells liquefied petroleum gas to an end user for consumption.

Retail Station—that portion of property where liquefied petroleum gases used as motor fuel are stored and dispensed from fixed equipment into liquefied petroleum gas fuel tanks of motor vehicles and where such dispensing is an act of retail motor fuel sale.

State of Emergency or Disaster—any event declared by the governor of the state by his authority under the "Louisiana Homeland Security and Emergency Assistance and Disaster Act" under R.S. 39:721 et seq.

System or Liquefied Petroleum Gas System—any tank, container, heat or cold producing device, appliance or piping that utilizes or has liquefied petroleum gas connected thereto. This includes, but is not limited to, ranges, hot water heaters, heaters, air conditioners, containers, tanks, furnaces,

space heaters or piping used in the transfer of liquefied petroleum gas either in the vapor or the liquid state from one point to another, internal combustion engines, both stationary and mobile, grain dryers or any combination thereof.

Tank(s)—same as a container(s).

Used Manufactured Home—a manufactured home which is not being sold or offered for sale as new, which has been previously sold as new and is used for residential purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 24:459 (March 1998), LR 29:2508 (November 2003), LR 31:2556 (October 2005), LR 33:1139 (June 2007), effective July 1, 2007, LR 36:2571 (November 2010), amended LR 38:

§105. Applications

A. Any person, firm, or corporation desiring to enter the liquefied petroleum gas business in the state of Louisiana shall file formal application for a permit or registration with the commission. In the case of Class VI and Class VIII permits, a formal application for a permit shall be filed for each location. All other classes of permits and registrations require only one formal application for the permit or registration. These applications for permits or registrations shall be administratively granted by the office of the director, upon complying with all commission requirements, such as payment of the applicable fees, qualification of personnel, providing proof of insurance and if applicable, final approval of a sketch, registration and safety inspection of tanker trucks. The commission shall ratify the permits or registrations at the first subsequent commission meeting after at least 20 days have elapsed after the permit has been administratively granted by the office of the director. Presence of applicant for the permit or his authorized representative is required at the commission meeting when the application for a permit is ratified, except in the cases of Class VI-X, VII-E, and R-1, R-2 registrations, where appearance is waived. The applicant's supplier is prohibited from being the authorized representative. Only with special approval of the commission, under extenuating circumstances, will the commission allow the applicant for a permit to be represented by another party other than a principal officer, director, manager, or attorney. The formal application form(s) will be furnished by the commission upon request.

B. No person, firm or corporation engaged in selling of liquefied petroleum gas only in small consumer quantities in U.S. Department of Transportation specification 2Q containers shall be required to obtain a permit as required by R.S. 40:1847. These quantities shall not exceed 1 liter per container.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 11:557 (May 1985), LR 24:460 (March 1998), LR 25:1262 (July 1999), LR 29:2509 (November 2003), LR 31:2567 (October 2005), LR 33:1139 (June 2007), effective July 1, 2007, amended LR 38:

§107. Requirements

A. Before any permit or registration may be issued from the office of the director, all applicants shall have complied with or agree to comply with the applicable requirements as follows:

1. Shall deposit filing fee of \$100 for Class I and IV; \$50 for Class VI-X and \$25 for all other classes and registrations. This fee shall accompany application.

2. Formal application for a permit or registration shall be submitted to the office of the director.

3. Shall have on file in the office of the director, proof of insurance, on a commission proprietary certificate of insurance, or one substantially equivalent, issued by a Louisiana licensed agent, in the minimum sum of \$1,000,000, in the classes of insurance as required by the commission. This certificate of insurance shall indicate the type and amount of coverage. This policy of insurance shall meet the proof of insurance as required by the commission. Said certificate shall be considered evidence of liability insurance coverage; said certificate shall state that in the event the insurance company cancels the insurance policy, the insurance company shall notify the office of the director 10 days prior to the date of cancellation. A binder of insurance coverage shall be acceptable as proof of insurance until the policy is issued and a certificate of insurance is issued. The \$1,000,000 requirement shall be effective on the first proof of insurance required after November 1, 2003. The commission shall provide the proprietary certificate of insurance form on its public web site for downloading or shall provide copies of the proprietary certificate of insurance form via facsimile or via U.S. mail upon request. In lieu of the certificate of insurance for automobile liability, the commission may accept a certificate of self-insurance issued by the office of motor vehicles.

a. In lieu of such liability insurance coverage, the applicant may post with the commission bonds or other securities issued by the United States of America or the state of Louisiana, or certificates of deposit or similar instruments issued by a lending institution regulated by an agency of this state or by the federal government, in the minimum sum of \$1,000,000, which bonds or securities shall be held in trust by the commission for the benefit of any person, firm or corporation to which such legal liability may accrue;

b. Nothing in this Paragraph shall be construed as reducing the insurance requirements imposed by the laws or rules and regulations of the federal government or the state of Louisiana upon persons, firms or corporations engaged in the liquefied petroleum gas business.

4.a. Where applicable, storage tank and location shall be approved by the commission's authority having jurisdiction.

b. All sketches or drawings of proposed bottle filling plants and/or liquid withdrawal systems shall be submitted to the office of the director and approved before system is put into operation.

5.a. Where applicable, applicant shall provide adequate transport and/or delivery trucks satisfactory to the commission. Each transport and/or delivery truck used in Louisiana shall be registered in Louisiana and shall be inspected annually by the commission or other qualified agency acceptable to the commission. However, any transport and/or delivery truck registered and not being used

in Louisiana shall either have the inspection required of those used in Louisiana or apply for a waiver of the inspection, in writing, prior to its inspection due by date. Transports and/or delivery trucks granted a waiver of inspection shall be inspected prior to their use in Louisiana. Each transport and/or delivery truck registered in Louisiana shall have an annual registration fee of \$50 paid and a valid registration decal affixed to the transport and/or delivery truck.

b. All sketches of proposed installations, as required in other Sections of these regulations, shall be submitted to the office of the director, showing all details of the proposed installation governed by these regulations. Sketches or drawings shall be submitted to the office of the director and approved before installation may begin. The commission reserves the right to make a final inspection and witness a pressure test by an inspector of the commission.

c. Each location of Class 1, Class 6 and Class 8 dealers, which fill DOT specification cylinders of 200 lbs. or less, liquefied petroleum gas capacity, that are in commerce or transportation, shall provide a suitable weighing device (scales).

6. Applicant shall have paid a permit fee in the amount of \$75, except for Class VII-E, which shall be \$100, and R-1, R-2 registrations, which shall be \$37.50 and Class VI-X shall be in the amount of \$75 for the first location, plus \$50 for each 2-11 locations, plus \$25 for each 12-infinity locations. For succeeding years the permit fee shall be 0.1242 of 1 percent of annual gross sales of liquefied petroleum gas with a minimum of \$75, except in the case of Class VI-X which the minimum permit fee shall be \$75 for the first location, plus \$50 for each 2-11 locations, plus \$25 for each 12-infinity locations; or 0.1242 of 1 percent of annual gross sales of liquefied petroleum gases of all locations whichever is greater. For classes not selling liquefied petroleum gases in succeeding years the permit fee shall be \$75, except registrations shall be \$37.50 per year.

a. Each Class I and Class IV dealer shall prepare and submit reports to the commission of each three month period within their annual permit fee calculation period, by the end of the month following each three month period, in a form acceptable to the commission, the previous three month's purchases and sales. An additional five calendar days shall be granted for mail delays before a violation is issued.

b. The reports of Class IV dealers shall contain the purchases and sales indicated by total dollars and by company name. The reports of Class I dealers shall contain the purchases by total dollars and by company name and sales by total dollars only.

c. Any information so furnished shall be considered and held confidential and privileged by the commission, its director and/or his employees.

7. Persons in charge of operations shall furnish proof satisfactory to the commission and the office of the director, that they have had experience in and are familiar with and will abide by all safety precautions necessary in the conducting of the business for which they are granted a permit.

8. All service and installation personnel, fuel transfer personnel, carburetion mechanics and tank truck drivers shall have a card of competency from the office of the

director. All permit holders, except Class VI-X permit holders, shall have at least one card of competency issued to their permit. The commission may waive the one card of competency until the dealer commences operations in the state. A card of competency shall be issued to an applicant upon receipt of a \$20 examination fee and successfully passing the competency test, providing the applicant holds some form of identification acceptable to the commission. The commission may accept as its own a reciprocal state's examination which contains substantially equivalent requirements. This shall be evidenced by a letter from the issuing authority or a copy of a valid card issued by the reciprocal state. All applicable fees shall be paid prior to issuing the card.

a. All cards of competency shall be renewed annually by the permit holder. There is a charge of \$10 per card. After expiration, there is a penalty of \$3 per card. There is a charge of \$10 for replacing a lost card, a change of employer name or change of company name. A card with an improper employer or company name shall not be valid.

b. All employees who are qualified by this commission and have been issued certificates of competency, shall have their certificates of competency on their person while on duty. Should an employee lose his card, dealer shall notify this office within 10 days for the issuance of a new card. If an employee terminates his employment with the dealer for whom the card is issued, the card shall be picked up by the dealer and returned to this office immediately.

c. The following shall be mandatory training requirements in order to maintain a certificate of competency in Louisiana:

i. New Hires

(a). Certified Employee Training Program (CETP) or commission approved alternatives shall be the basis of all new hire training, which is not grandfathered.

(b). In addition to the standard commission competency test which is required prior to beginning work unsupervised, all certificates of competency holders of Class 1 permit holders with certificates of competency with the following names: delivery truck driver, manager exam, installation and service, and delivery truck driver/limited service shall pass the CETP Basic Test or commission approved alternative training program within one year of their hire date. Up to two years provisional certificates of competency may be issued by the commission. Other commission certificates of competency, namely serviceman recreational vehicles, transport truck driver, motor fuel and carburetion installation, welding and metal working industry, cylinder delivery truck driver, cylinder re-qualification, and all combined certificates containing the immediate before named certificates of competency are exempt from this provision.

(c). Training may be given by the individual companies or may be given by an outside firm and individual companies may use any method they choose to train their employees on the CETP Basic Program, if used. This may include, but is not limited to, e-learning, CDs, manuals, classroom instruction or any combination thereof.

(d). The CETP Basic Test, if used, shall be proctored by a licensed proctor.

(e). Proof of a passing grade, for purposes of certification, shall be maintained in dealer employee file. In addition, the employer shall be required to certify by signature on the official card of competency renewal form that the employee has passed the CETP Basic test prior to the second renewal period for the employees subject to the provisions of §107 (A)(8)(c)(i). The employer shall maintain this record until 1 year after the employment has terminated.

(f). Individuals who have held a certificate of competency with the commission for five consecutive years or longer are exempt from the CETP Basic test new hire provision; however, they shall meet the continuing education training provisions:

ii. Continuing Education

(a). Individuals with a commission certificate of competency in the following test names: transfer and cylinder filling operator, delivery truck driver, manager exam, installation and service, welding and metal working industry, cylinder delivery truck driver, delivery truck driver/limited service, and all combined certificates containing any of the immediate before named certificates of competency shall have a minimum of two hours of approved continuing education every three years in order to maintain their certificates of competency.

(b). This training shall include training that is most tailored for the particular functions the employee does on a normal and routine basis. This may include CETP modular training classes, defensive driving classes, equipment certification classes, pipe sizing classes, leak check classes and other similar training pre-approved and assigned credit time by the commission.

(c). All training approved by the commission shall be in objective format such as written, video with audio, or audio only. Each training class will be assigned credit time value for meeting time requirements of this Section.

(d). This training may be done in-house by the dealer, by outside sources, or by commission inspectors.

(e). Proof of a passing grade, for purposes of certification, shall be maintained in dealer employee file. In addition, the employer shall be required to certify by signature on the official card of competency renewal form that the employee has passed the CETP Basic test prior to the second renewal period for the employees subject to the provisions of §107 (A)(8)(c)(ii). The employer shall maintain this record until 1 year after the employment has terminated.

9. Shall have necessary experience in liquefied petroleum gas business or have employed a recognized operator of such experience and competency. The commission reserves the right to demand that such knowledge and competency be proved by a written examination.

10. Where applicable, shall provide adequate switch track or tank loading and unloading facilities. All auxiliary equipment such as pumps, hose, electrical switches, etc., shall be Underwriters Laboratory approved for liquefied petroleum gases. If equipment is not approved, drawings and descriptions shall be submitted to the office of the director for his approval before installation.

11. Applicants for change of name shall deposit a filing fee of \$25 with a formal application for a name change. The office of the director shall administratively grant the name change after all commission requirements are met. The commission shall ratify the name change at the next commission meeting after which a minimum of 20 days have elapsed since the administrative granting of the name change. A representative of the new firm or corporation shall be required to be present when the application is ratified by the commission, except in the cases of Class VI-X, VII-E, and R-1 and R-2 registrations, when appearance is waived. All certificates of competency shall be changed to new name, except Class VI-X which does not require certificates of competency.

12. Any permit holder who does not actively engage in business for which permit was granted, for a period of six consecutive calendar months, may have his permit revoked by the commission.

13. The commission shall grant Class I Liquefied Petroleum Gas permits to nonresident applicants only after the commission has reached a reciprocal agreement with the Liquefied Petroleum Gas regulating authority of the state in which the applicant resides.

14. All Class I, Class VI, Class VI-X, and Class VIII permit holders shall accept, for proper disposal or requalification, all 4 lb. through 40 lb. liquefied petroleum gas cylinders from consumers, when offered, which are not suitable for continued service in their present condition. Class I permit holders who supply liquefied petroleum gas to Class VI, Class VI-X and Class VIII permit holders shall accept and properly dispose of or requalify all 4 lb. through 40 lb. liquefied petroleum gas capacity cylinders when offered by their Class VI, Class VI-X, or Class VIII permit holders for disposal or requalification. Those cylinders offered for disposal or requalification become the property of the permit holders accepting the cylinder. It is the responsibility of the Class I permit holders to properly dispose of the cylinders which are not or cannot be requalified.

15. All classes of permit holders who fill cylinders on their premises for the public shall have a "Reject and Do Not Fill" poster or sign approved by the commission at each filling location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, LR 1:315 (July 1975), LR 4:86 (March 1978), LR 7:633 (December 1981), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 11:557 (May 1985), LR 15:854 (October 1989), LR 16:1063 (December 1990), LR 20:1400 (December 1994), LR 24:461 (March 1998), LR 24:2311 (December 1998), LR 25:1262 (July 1999), LR 25:2410 (December 1999), LR 26:1487 (July 2000), LR 27:2256 (December 2001), LR 28:2553 (December 2002), LR 29:2509 (November 2003), LR 31:2567 (October 2005), LR 33:1140 (June 2007), effective July 1, 2007, LR 35:2201 (October 2009), LR 35:2465 (November 2009), amended LR 38:

§109. Compliance with Rules

A. Compliance with all other applicable rules and regulations is a mandatory requirement for all permit holders.

B. The commission may assess a civil penalty of not less than \$100 nor more than \$1000 for each violation of the

rules and regulations adopted by the commission. Civil penalties may be assessed only by a ruling of the commission based on an adjudicatory hearing held in accordance with the Administrative Procedure Act. The commission may institute civil proceedings to enforce its ruling in the district court for the parish in which the commission is domiciled or the district court for the parish in which the violation occurred.

C. In lieu of the adjudicatory hearing required in §109.B, the commission may accept an affidavit signed by the party being cited for a violation, prior to the hearing date set for the charge, waiving their right of appearance, with a plea of guilty to a charge, and with the payment of a proposed penalty as set forth in the notice issued by the commission. Regarding violations involving fees, the fee and any interest and penalty on those fees shall be paid in addition to the proposed civil penalty for the violation. This option shall not be available after the hearing date.

D. Proposed civil penalties shall be limited to the following amount per subject matter area on the first violation, within a three year period: insurance \$225, permit fees \$150, signage requirements \$150, tanker truck registrations \$300, tanker truck, school bus and mass transit safety inspections \$150, school bus and mass transit registrations \$150, installation reports \$150, failure to accept cylinders for disposal \$150, scale requirements \$150 and chock block requirements \$100. The commission may increase the proposed civil penalties by 25-30 percent for a second violation, within a three year period. The commission shall require appearance at the adjudicatory hearing for a third violation within a three year period.

E. The commission reserves the right to conduct a full adjudicatory hearing regarding any violation of its rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 11:557 (May 1985), LR 25:2411 (December 1999), LR 31:2567 (October 2005), amended LR 38:

§111. Re-Application

A. Any person, firm or corporation who has made application for a permit to enter the liquefied petroleum gas business and whose request for permit has been denied, may re-submit an application 90 days after date of denial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, LR 7:633 (December 1981).

§113. Classes of Permits and Registrations

A. The commission shall issue upon application the following classes of permits and registrations upon meeting all applicable requirements of §107 and the following:

1. Class I. Holders of these permits may enter any phase of the liquefied petroleum gas business.

a. Shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 coverage per:

- i. products;
- ii. manufacturers and contractors; and
- iii. automobile liability.

b. Holders of these permits shall provide a storage capacity for liquefied petroleum gas of not less than 15,000 gallons in one location, under fence, located within the dealer trade area within the state of Louisiana, and shall show evidence of ownership of storage tank or a bona fide lease of five years minimum. This requirement shall not be retroactive.

c. Where fuel is used direct from cargo tank, an approved valve with proper excess flow device shall be used. Connector to vehicle's engine shall be approved for such use and protected from mechanical injury.

d. No truck shall be parked on a street or highway at night in any city, town, or village, except for the purpose of serving a customer.

e. Compliance with all other applicable rules and regulations is a mandatory requirement.

f. The name of the dealer shall appear on all tank trucks, storage tank sites, and/or advertising being used by the dealer. At consumer premises, where the tank or the container is owned by the dealer, the dealer's name shall be affixed. This requirement is considered met if documentation is provided, upon demand, that the dealer's name was affixed at the time of installation. Consumer premises requirement is not retroactive.

2. Class II. Holders of these permits may install and service liquefied petroleum gas containers, piping, and appliances but shall not sell nor deliver gas with this permit. This class is also applicable to the installation and service of liquefied petroleum gas containers, piping, and appliances on mobile homes, modular homes, manufactured homes, motor homes, travel trailers homes or any other recreational vehicles.

a. Holders of these permits shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 coverage per:

- i. products;
- ii. manufacturers and contractors; and
- iii. motor vehicle liability.

b. Louisiana manufacturers and dealers of mobile homes, manufactured homes, modular homes, motor homes, travel trailers, or any recreational vehicles shall comply with all state and federal safety standards and perform all safety tests on mobile homes, modular homes, manufacture homes, motor homes, travel trailers, or any recreational vehicles using liquefied petroleum gas.

c. Upon delivery of a mobile home, manufactured homes, modular homes, motor home, travel trailer, or any other recreational vehicle, new or used, the required installation report and inspection and testing of any liquefied petroleum gas system and appliances shall be performed by the dealer or any entity performing functions as a dealer using liquefied petroleum gas in the system. An installation report properly completed and signed by the customer or his/her authorized representative shall be sent to the office of the director verifying that the tests were performed and that the test was eye witnessed by the customer or his/her authorized representative.

d. The mobile home, manufactured homes, modular homes or recreational vehicle dealer or entity performing functions as a dealer shall have a permit with this commission and is responsible to this commission to make the required installation report, perform the required

inspection and safety tests, or make arrangements for it to be made by a qualified permit holder.

e. Compliance with all other applicable rules and regulations is a mandatory requirement.

3. Repealed and Reserved.

4. Class IV. Resellers (Wholesalers). Holders of these permits may deliver and transport liquefied petroleum gas over the highways of the state; may sell liquefied petroleum gases only to manufacturers of liquefied petroleum gases, or manufacturers of products which liquefied petroleum gases form a component part, or to dealers who hold a permit with this commission; utilize aboveground steel storage and/or approved salt dome, shale and other underground caverns for the storage of liquefied petroleum gases; do general maintenance work on their equipment, using qualified personnel, but shall not sell or install systems and appliances.

a. Shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 coverage per:

- i. products;
- ii. manufacturers and contractors; and
- iii. automobile liability.

b. The name of the dealer shall appear on all tank trucks which require registration with the commission and storage tank sites.

c. Compliance with all other applicable rules and regulations is a mandatory requirement.

5. Class V. Carburetion Permit. Holders of these permits may install equipment, including containers, and service liquefied petroleum gas equipment used on internal combustion engines. They shall not deliver liquefied petroleum gas.

a. Holders of these permits shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 per manufacturers and contractors liability coverage.

b. Compliance with all other applicable rules and regulations is a mandatory requirement.

6. Class VI. Holders of these permits may engage in the filling of approved cylinders and motor fuel tanks with liquefied petroleum gas on their premises, but shall not deliver gas.

a. Holders of these permits shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 per products liability coverage.

b. The name of the dealer shall appear on storage tank sites.

c. Compliance with all other applicable rules and regulations is a mandatory requirement.

7. Class VI-X. Holders of these permits may engage in the exchange of approved liquefied petroleum gas cylinders on their premises, but shall not fill cylinders. They shall not deliver gas.

a. Holders of these permits shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 per products liability coverage.

b. Any current Class VI permit holder may convert to a Class VI-X permit by filing formal application with the commission and submitting a \$25 filing fee. Presence of the applicant at the commission meeting will be waived. Upon receipt of the application and filing fee, permit shall be

issued. No dealer can hold a Class VI and a Class VI-X permit at the same location.

c. Compliance with all other applicable rules and regulations is a mandatory requirement.

8. Class VII. Holders of these permits may transport liquefied petroleum gas by motor vehicle over the highways of the state of Louisiana but shall not sell product in the state. This permit may be secured from the office of the director upon receipt of the following:

a. Holders of these permits shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 per automobile liability coverage.

b. Where fuel is used direct from cargo tank, an approved valve with proper excess flow device shall be used. Connector to vehicle's engine shall be approved for such use and protected from mechanical injury.

c. No truck shall be parked on a street or highway at night in any city, town, or village, except for the purpose of serving a customer.

d. The name of the dealer shall appear on all tank trucks which require registration with the commission.

e. Compliance with all other applicable rules and regulations is a mandatory requirement.

9. Repealed and Reserved.

10. Class VIII. Holders of these permits may store, transport and sell liquefied petroleum gas used solely in the cutting and metal working industry, sell and install piping and containers for those gases and engage in the filling of approved ASME tanks, ICC or DOT containers used in the metal working industry.

a. Holders of these permits shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 per products, manufacturers and contractors, and automobile liability coverage.

b. The name of the dealer shall appear on all tank trucks which require registration with the commission and storage tank sites.

c. Compliance with all other applicable rules and regulations is a mandatory requirement.

11. Class IX. Holders of these permits may inspect, recertify and recondition DOT and ICC cylinders. They shall not sell or deliver liquefied petroleum gas or anhydrous ammonia.

a. Holders of these permits shall obtain from DOT a Retesters Identification Number, and provide proof of such to the commission.

b. Holders of these permits shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 per products liability coverage.

c. Holders of these permits shall provide drawing and description of equipment to be installed to retest cylinders. Drawing and description shall be submitted to the office of the director for his approval before installation.

d. Holders of these permits shall maintain an accurate log of all cylinders that have been retested by date, size, manufacturer name, and serial number. The commission reserves the right to inspect such logs at any time through its representative.

e. Compliance with all other applicable rules and regulations is a mandatory requirement.

12. Registration 1 (R-1). Holders of these registrations shall be a person, firm, or corporation who is engaged in the

business of plumbing and holds a master plumber's license issued by the state of Louisiana. They may install liquefied petroleum gas or anhydrous ammonia piping and make alterations or modifications to existing piping systems. These registrations shall be issued by the office of the director upon meeting the applicable requirements of §107 and the following:

a. Holders of these permits shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 per manufacturers and contractors liability coverage.

b. Compliance with the provisions of NFPA Pamphlet Number 54 (*National Fuel Gas Code*) and NFPA Number 58 (*Standard for the Storing and Handling of Liquefied Petroleum Gas*) and ANSI K 61.1-1989 is a mandatory requirement.

c. Compliance with all other applicable rules and regulations of the commission is a mandatory requirement.

13. Registration 2 (R-2). Holders of these registrations shall be a person, firm, or corporation engaged in the mechanical contracting business. They may install liquefied petroleum gas and/or anhydrous ammonia appliances and equipment, and make alterations or modifications to existing liquefied petroleum gas and/or anhydrous ammonia appliances and equipment. These registrations shall be issued by the office of the director upon meeting the applicable requirements of §107 and the following:

a. Holders of these permits shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 per products and manufacturers and contractors liability coverage.

b. Compliance with the provisions of NFPA Pamphlet Number 54 (*National Fuel Gas Code*) and NFPA Number 58 (*Standard for the Storing and Handling of Liquefied Petroleum Gas*) and ANSI K 61.1-1989 is a mandatory requirement.

c. Compliance with all other applicable rules and regulations of the commission is a mandatory requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended and promulgated LR 3:315 (July 1977), amended LR 7:633 (December 1981), LR 8:53 (January 1982), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 11:557 (May 1985), LR 12:841 (December 1986), LR 15:855 (October 1989), LR 16:1063 (December 1990), LR 19:904 (July 1993), LR 20:1400 (December 1994), LR 21:701 (July 1995), LR 24:461 (March 1998), LR 25:2411 (December 1999), LR 29:2509 (November 2003), LR 33:1141 (June 2007), effective July 1, 2007, amended LR 38:

Subchapter B. Dealers

§115. Compliance with Rules and Act

A. All dealers who fail to comply with R.S. 40:1841 et seq. and the rules and regulations of the commission may have their application for permit denied or their permit suspended and/or revoked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public

Safety and Corrections, Liquefied Petroleum Gas Commission, LR 15:860 (October 1989), LR 24:464 (March 1998), amended LR 38:

§117. Revocation of Permits

A. The commission may revoke or suspend a permit only by a ruling of the commission based on an adjudication hearing held in accordance with the Administrative Procedure Act. The following are causes for revocation or suspension of a permit:

1. when the commission has assessed two or more penalties against a dealer for willful violation of or failure to comply with such rules and regulations, provided the second or succeeding penalty or penalties have been imposed for violations of or failure to comply, were committed after the imposition of the first penalty;
2. willful or knowing violation of a rule or regulation of the commission which endangers human life or health;
3. failure to properly odorize gas as required by R.S. 40:1846;
4. failure to provide insurance or proof of insurance as required;
5. failure to pay permit fees as required;
6. failure to pay any civil penalty imposed by the commission under provisions of R.S. 40:1846.1(E) within 30 days after the assessment becomes final.

B. The commission shall give 15 days written notice of the date, time and location of a hearing to deny, suspend or revoke a permit, or to impose a fine.

C. Any dealer who continues to operate after such permit is revoked or during the period of such suspension shall be liable to prosecution under provisions hereof in the same manner as if no such permit had ever been issued.

D. The commission may institute civil proceedings to enforce its rulings in the district court for the parish in which the commission is domiciled or in the district court for the parish in which violation which gave rise to the suspension or revocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 24:464 (March 1998), amended LR 38:

§119. Permit Fees

A. All fees pursuant to R.S. 40:1849 shall be paid before a new permit will be issued each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 16:1063 (December 1990), amended LR 38:

§121. Expiration of Permit

A. All permits or registrations shall expire at midnight on the date of their expiration.

B. All permits or registrations renewed after their expiration date shall have an administrative penalty of 5 percent of the assessed permit or registration fee for each month or fraction thereof, not to exceed 25 percent of the amount of the assessed permit or registration fee.

C. All permits or registrations renewed after their expiration date shall have administrative interest of 1 percent

of the assessed permit or registration fee added for each month or fraction thereof to the amount of the permit or registration fee due.

D. Five days after the expiration of a permit or registration fee renewal date, any dealer continuing in operation without the payment of the fee, administrative penalty, and/or administrative interest due shall be considered as operating in violation of R.S. 40:1841-1853 and the rules and regulations of the commission. The commission may assess a civil penalty in accordance with R.S. 40:1846.1.E or any applicable provision of LAC 55:IX.117.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 16:1063 (December 1990), LR 24:464 (March 1998), LR 27:422 (March 2001), amended LR 38:

§123. Qualified Personnel

A. All service, installation, fuel transfer personnel, combustion mechanics, transport and delivery truck drivers shall have a card of competency from the office of the director. New employees shall not make installations, service equipment, handle or deliver gas until they have passed the examination given by the office of the director or furnished proof to the office of the director of their qualifications by another qualified agency acceptable to the commission and a card showing their competency has been issued to them.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 24:464 (March 1998), amended LR 38:

§125. Report Accidents and Fires

A. Any accident involving liquefied petroleum gas or the transportation of liquefied petroleum gas which causes injury to employees, property damage, or injury to other persons or an accidental release of liquefied petroleum gas reportable under the Louisiana Right-To-Know Law shall be reported by that dealer in writing to the office of the director as soon as possible but not later than 48 hours after the accident. The office of the director shall accept, in lieu of the required report in writing, data and information from the information system established under the Hazardous Materials Information Development, Preparedness and Response Act.

B. Any fire in which liquefied petroleum gas is directly or indirectly involved shall be reported in writing to the office of the director by the dealer servicing that installation within 48 hours of knowledge of the fire, preferably immediately, so that it can be investigated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 24:465 (March 1998), amended LR 25:2412 (December 1999), amended LR 38:

§127. Insurance

A. Insurance requirements for all persons, firms, or corporations with the same class permit or registration shall be the same. New dealer insurance requirements shall be the same as existing dealer requirements.

B. The commission may invoke the applicable provisions of §117 when insurance requirements are not met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 24:465 (March 1998), LR 38:

§129. Odorizing Gases

A. Odorization and verification of odorization in liquefied petroleum gases shall be in accordance with the following provisions:

1. Except as otherwise provided in this Subchapter, each refinery, commercial storage facility, natural gas processing plant, pipeline, or other person which sell liquefied petroleum gas to a transporter, dealer, or distributor for distribution into the distribution chain to consumers shall odorize the liquefied petroleum gas in accordance with the provisions of this Subchapter.

2. Liquefied petroleum gas shall not be required to be odorized if it is to be delivered to a manufacturer of products of which liquefied petroleum gas forms a component part, to any facility for further processing, to a commercial storage facility, a natural gas processing plant, a refinery, a pipeline, or when odorization would be harmful in further use or processing of the gas and would not serve a useful purpose as a warning agent in further use or processing of the gas.

3. Liquefied petroleum gas, which is required to be odorized, shall be effectively odorized by an approved agent of such character as to positively, by a distinctive odor, the presence of gas down to concentrations in air of not over one-fifth the lower limit of flammability. The presence of odorization, when required, shall be positively verified by the dealer by a sniff test or other means, and the results shall be documented prior to delivery into his bulk plant, or when a shipment bypasses a bulk plant, prior to delivery to a consumer. It is the intent of this Paragraph to prohibit the sale or delivery of liquefied petroleum gas by a dealer to a consumer without the required odorization.

4. The odorization requirement shall be considered to be met by the use of 1 pound of ethyl mercaptan, 1 pound of thiophane, or 1.4 pounds of amyl mercaptan per 10,000 gallons of liquefied petroleum gas, subject to the provisions of Paragraph 5 of this Subsection.

5. In order to maintain the minimum concentrations of odorant in the liquefied petroleum gas at the point of use by the consumer, the rules and regulations recommend that each person who is required to odorize gas under this Section use 1 1/2 pounds of odorant per 10,000 gallons of liquefied petroleum gas at the point of odorization.

6. The only approved odorants are those specified in Paragraph 4 of this Subsection; however, the commission may authorize, by rule, the use of other odorants which are equal in effectiveness to the odorants specified in Paragraph 4 of this Subsection.

7. The commission shall require each person who transports liquefied petroleum gas that is exempt from the

odorization requirements of this Section to keep records of all purchases of unodorized gas for 3 years. The records shall include bills of lading, loading tickets and records of all deliveries of unodorized gas. Each delivery ticket and bill of lading shall be identified by reference to the bill of lading number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 11:558 (May 1985), LR 29:2510 (November 2003), amended LR 38:

§131. Compliance with Rules

A. Compliance with all other applicable rules and regulations is a mandatory requirement for all permit holders.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended LR 38:

§133. Shall Purchase Containers Manufactured by Manufacturers Acceptable to the Authority Having Jurisdiction

A. All liquefied petroleum gas containers purchased shall be manufactured by a manufacturer acceptable to the commission. A list of such manufacturers shall be furnished by the commission upon request.

B. A manufacturer of liquefied petroleum gas containers shall be listed by the commission as acceptable when it has met or exceeded the requirements of Chapter 5, NFPA 58, 2008 edition and provided documentation acceptable to the commission of the same.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 24:465 (March 1998), amended LR 38:

§135. Condemnation of Tanks

A. Any liquefied petroleum gas storage container corroded, pitted or worn to 20 percent of the thickness of the head, shell plate, or stand pipe shall be condemned for further storage of liquefied petroleum gas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, LR 38:

§139. Liquefied Petroleum Gas Systems

A. A dealer shall not serve any liquefied petroleum gas system which the dealer knows is improperly installed or in a dangerous condition. All improper systems shall be corrected before the dealer services such system with fuel for the first time. A servicing dealer shall not be responsible for unauthorized changes in or failures of an existing system or connected appliances that have been tested, checked and found in compliance with commission rules and regulations.

B. In the interest of safety and for the protection of life and property, any end user who authorizes the maintenance and/or repair, installation, adjustment, and servicing of a liquefied petroleum gas system in the state of Louisiana shall

insure that any person, firm, or corporation that may be employed and/or authorized to make such repairs has a current permit or registration and cards of competency from the commission to perform maintenance and/or repair, installation, adjustment and/or servicing of that system.

C. Any end user authorizing any action listed in §139.B, where such actions are completed by any person, firm, or corporation other than the liquefied petroleum gas dealer who normally services the liquefied petroleum gas system, shall notify, as soon as possible, the servicing dealer authorized to service the affected liquefied petroleum gas system. This notification shall include:

1. name of the person, firm, or corporation that performed the service; and

2. actions taken to the affected liquefied petroleum gas systems such as adding piping, space heaters, and other such appliances. The end user shall make the described notification within five working days after completion of the action or before the liquefied petroleum gas system is next serviced with liquefied petroleum gas, whichever occurs first.

D. It is unlawful for any person, firm, or corporation to repair, install, adjust and/or service any liquefied petroleum gas system without meeting the requirements of the commission.

E. No person, firm, or corporation, except the owner, thereof, or person, firm, or corporation authorized in writing by said owner, shall fill, refill, buy, sell, offer for sale, give, take, loan, dispose of, or traffic in, a liquefied petroleum gas container or tank.

F. No individual shall be subject to a criminal fine or imprisonment under §139 as a result of any willful and wrongful acts of a fellow employee or subordinate employee whose willful and wrongful act was carried out without the knowledge of the individual. Whoever is found to be guilty of any of the following acts shall be fined not more than \$50,000, or imprisoned with hard labor for not more than 10 years, or both:

1. willful or knowing violation of a rule or regulations of the commission which endanger human life or health;

2. failure to properly odorize gas or to verify the presence of odorant pursuant to R.S. 40:1846 and §129 of this Subchapter.

G. Anyone violating §139 shall also be liable for all damages resulting from any fire or explosion involving that shipment. The liability imposed by §139 shall not be delegated by contract or practice to any transporter or subcontractor responsible for the transportation of the liquefied petroleum gas.

H. A permit may be suspended or revoked by the commission whenever the commission has assessed two or more penalties against a dealer for willful violation of, or failure to comply with, such rules and regulations, provided the second or succeeding penalty or penalties have been imposed for violations of, or failure to comply with the regulations of the commission committed after the imposition of the first penalty or forfeiture, reserving to the dealer the right to resort to the courts for reinstatement of the permit suspended or revoked. The commission may suspend or revoke the permit of any person who fails to pay any civil penalty imposed by the commission under the provisions of R.S. 40:1846.1(E) within 30 days after the assessment

becomes final. Any dealer who continues to operate after such permit is revoked or during the period of such suspension shall be liable to prosecution under the provisions hereof in the same manner as if no such permit had ever been issued. A permit may be revoked or suspended only by a ruling of the commission based on adjudicatory hearing held in accordance with the Administrative Procedure Act. The commission may institute civil proceedings to enforce its rulings in the district court for the parish in which the commission is domiciled or in the district court for the parish in which the violation occurred.

I. No dealer shall service a liquefied petroleum gas system, tank or another dealer after having received notification by the commission that the system, tank or dealer is not in compliance with these rules and regulations. An All Dealers (AD) letter which states that a system, tank or dealer is not in compliance posted on the commission's public website shall constitute notification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 15:860 (October 1989), LR 24:465 (March 1998), LR 29:2510 (November 2003), amended LR 38:

§141. Customer Notification

A. Each dealer shall transmit a notice once each year to each customer stating that liquefied petroleum gas systems are potentially dangerous, that a leak in the system could result in a fire or explosion, and that systems should be inspected periodically.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 11:559 (May 1985), LR 38:

§143. Inspections

A. Each dealer facility subject to the regulations of the commission shall submit to an inspection by a representative of the commission at least once every three years, which inspections may be conducted without prior notice by the commission or its representative.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 11:559 (May 1985), LR 38:

§145. Dealer Permit Requirements

A. Permits required under these general requirements shall not be transferred. All dealers, regardless of operation, shall hold a permit and are prohibited from operating under a permit of another dealer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 11:559 (May 1985), amended LR 38:

Subchapter C. Manufacturers of Liquefied Petroleum Gas Containers

§147. Bond

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, LR 7:634 (December 1981), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 24:466 (March 1998), amended LR 38:

§151. Classification of Containers

A. Containers shall be designed and classified as provided in the applicable Sections of the Chapter 5, National Fire Protection Association Pamphlet Number 58, 2008 edition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, LR 7:634 (December 1981), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 24:466 (March 1998); amended LR 38:

§155. Data Reports

A. Manufacturers shall mail two copies of the data report to the dealer making the purchase on the date of shipment.

B. The reverse side of each manufacturer's data report shall include the following form to be filled out by the manufacturer.

This vessel constructed in accordance with plans and specifications as shown on our drawing number.

Louisiana Liquefied Petroleum Gas Commission

Catalogue Number _____

Approved _____ 20 _____

Signed _____
(Name of Mfg.)

By _____
Title _____

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 15:860 (October 1989), amended LR 38:

Subchapter D. Forms and Reports

§159. Required Forms and Reports

A. The following forms and/or reports shall be filed with the Office of the Director:

1. Installation Reports shall be properly completed and witnessed by the customer or his/her authorized representative. This includes installed or re-installed tanks and the completed form shall be maintained in the dealer's files. These documents shall be made available to the commission within 15 days of request. Pressure tests shall be documented on the installation report when a container is installed or reinstalled. In other cases where pressure tests are required (See §167 and §175), the pressure tests may be filed with the commission on an installation report form and noted as such. Documentation of pressure tests shall be maintained by the dealer.

2. Sketches shall be filed with the office of the director for initial approval. Final approval shall be granted

by the office of the director after installation but prior to placing into service the following liquefied petroleum gas systems:

- a. school buses/mass transit vehicles;
- b. dealer bulk storages;
- c. liquid withdrawal systems, except systems for private use;
- d. places of public assembly, schools, churches, hospitals, nursing homes and other similar systems (either liquid or vapor systems);
- e. automatic dispensers used for motor fuel as required by LAC 55:IX.163.C;
- f. sketches for Class VI-X installations shall be filed with the office of the director for initial approval. The commission reserves the right to allow this installation to be placed in service prior to final inspection. Upon inspection, if this installation is deemed to be out of compliance with the commission's rules and regulations, the servicing dealer shall remove all LPG cylinders from the installation within 24 hours. Dealer shall correct all deficiencies and then request a final inspection and approval of the installation. The installation shall remain out of service until final approval is granted by the commission.

3. reports of fires and accidents in accordance with §125.

4. documentation in accordance with §147.

5. proof of insurance or financial security in accordance with §107.A.3 or §107.A.3.a.

6. drawings in accordance with §113.A.11.c.

7. Reports in accordance with §107.A.6.a.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 11:559 (May 1985), LR 15:861 (October 1989), LR 24:466 (March 1998), amended LR 38:

Subchapter E. Automatic Dispensers Used for Motor Fuel

§163. Automatic Dispensers Used for Motor Fuel

A. Automatic dispensers shall be permitted when a liquefied petroleum gas dealer enters into a contractual arrangement with a purchaser under a gas card-lock or other item or device to unlock or operate dispensing equipment for motor fuel when all requirements of this Section are met.

B. Automatic Dispensing Prohibited. The use of self service, coin operated, credit card or any other pump-activating automatic fuel dispensing device is prohibited at any retail station for use by the general public. The filling of ICC or DOT cylinders is prohibited.

C. A sketch shall be submitted to the office of the director detailing within 150 feet of the dispenser and the fuel storage container. This sketch shall include distances to buildings, roads, streets, property lines, railways, other flammables and the details of the dispensing unit and be approved before installation. After installation and before use, the installation shall be inspected and the sketch finalized by the office of the director.

D. Installations of Automatic Dispenser

1. Hose length shall not exceed 18 feet.

2. Dispensing device shall be located 10 feet from any dispensing device for Class 1 liquids.

3. All piping shall be Schedule 80 and all pipe fittings shall be forged steel having a minimum design pressure of 2,000 psi.

4. An excess flow valve shall be installed in the liquid and vapor piping in such a manner that displacement of the dispenser will result in the shearing of such piping on the downstream side of the excess flow valve.

5. Automatic dispensing system shall incorporate an Emergency Shut-off Valve (ESV) upstream from the pump, installed in accordance with its manufacturer's instructions.

6. The transfer hose downstream from the meter shall incorporate a pull-away device.

7. Each automatic dispensing system shall include a switch which requires the operator's constant manual activation to maintain a fuel flow. Overriding of such switch is prohibited.

8. Step-by-step operating instructions and fire emergency telephone numbers shall be posted in a conspicuous place in the immediate vicinity of the automatic dispenser.

9. Immediate vicinity of automatic dispenser shall be well lit during all hours of darkness.

10. A dealer who installs an automatic dispenser shall provide contractual purchaser with written instructions to operate dispenser. The contractual purchaser shall be cautioned to study and preserve such instructions and procedures, and to educate all those with access under his contract to the automatic dispenser in the proper operating procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 20:1402 (December 1994), amended LR 24:467 (March 1998), amended LR 38:

Subchapter F. Tank Trucks, Semi-Trailers and Trailers

§165. Measurement

A. All trucks delivering liquefied petroleum gas for domestic use shall be equipped with a suitable measuring device which shall be used to accurately gauge the amount of gas placed in each system, either by meter or by weight.

B. Truck meters shall be calibrated at least once every two years or every 1 million gallons of gas delivered, whichever occurs first. Calibration reports shall be retained by the dealer in his truck file for at least three years. The commission reserves the right to review calibration reports upon demand.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 20:1402 (December 1994), amended LR 24:467 (March 1998), LR 38:

§166. Transport/Delivery Truck Registration Decals and Inspections

A. Dealers who operate transport and/or delivery trucks in the state of Louisiana shall file Form DPSLP 8045 (R/97) with the office of the director between the dates of February 1 and April 30 each year to register and pay the required registration fees on all transport and/or delivery trucks used in Louisiana. New equipment and equipment being used for the first time in Louisiana and not registered during the registration period shall be registered and inspected before

operating over the highways of the state. Upon payment of the required fee, a registration decal shall be issued on Form 8044 (R/97) by the office of the director or a registration decal by a commission inspector to be displayed on the registered equipment. It shall be a violation of the commission rules to operate a transport and/or delivery truck over the highways of the state without the registration decal affixed.

B. Safety inspections are required on all transport and/or delivery trucks requiring registration. The required safety inspection shall be performed on all transport and/or delivery trucks registered on Form 8045 (R/97) and used in Louisiana, within a three month period prior to or a three month period subsequent to their registration. Safety inspections on transport and/or delivery trucks registered on Form 8045 (R/97) and not being used currently in Louisiana shall either:

1. be inspected the same as those being used; or
2. apply for a waiver of the inspection, in writing, prior to its inspection due by date. Transport and/or delivery trucks granted a waiver of inspection shall be inspected prior to their use in Louisiana. Safety inspections shall be performed by:

- a. an inspector of the commission.
- b. a qualified agency acceptable to the commission with acceptable documentation, that a safety inspection has been performed by that qualified agency.

3. Safety inspections performed by a commission inspector within the state of Louisiana shall be free of charge.

4. Safety inspections performed by a commission inspector outside of the state of Louisiana shall be subject to travel reimbursement to the commission from the permit holder(s) for which the travel was performed in accordance with Policy and Procedure Memorandum 49 guidelines. This travel shall be requested by the out of state permit holder and out of state travel shall be solely at the discretion of the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 24:467 (March 1998), amended LR 25:2412 (December 1999), LR 27:2256 (December 2001), amended LR 38:

§167. "Out-of-Gas Customers" or Interruption of Service Procedure

A. When a delivery of gas is made to any on-site container which is out of gas or the liquefied petroleum gas service was interrupted, the servicing dealer shall follow the following procedures.

1. When "out-of-gas customer" is not present and the container is serviced:

- a. shut off the container service valve;
- b. place a tag on the container and the residence, the building, or the equipment the container services indicating the container is out-of-service. The tag shall inform the gas customer to contact a liquefied petroleum gas dealer or other qualified agency to perform a leak check or test on the system as required before turning on the container. Further action is the responsibility of the customer. If the customer places the system back into service without the required test, he assumes liability for the system.

2. When "out-of-gas customer" is present and the container is serviced:

- a. shut off the container service valve;
- b. inform the gas customer the container is out of service and a qualified agency shall perform a leak check or test on the system as required before turning on the container. Further action is the responsibility of the customer. If the customer places the system back into service without the required test, he assumes liability for the system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 20:1403 (December 1994), amended LR 24:467 (March 1998), LR 33:1142 (June 2007), effective July 1, 2007, amended LR 38:

§169. Maintenance

A. All piping and auxiliary equipment shall be maintained in good mechanical condition at all times so as to eliminate in so far as possible all hazards to safe operation.

B. Vehicles and all components of vehicles shall be maintained in good mechanical condition at all times so as to prevent hazards to safe operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 20:1403 (December 1994), amended LR 38:

Subchapter G. Systems Utilizing ASME and D.O.T.

Containers

§171. Storage Capacity Requirements

A. The minimum capacity of above ground ASME storage containers shall be 100 gallon tank capacity for each 100,000 BTU appliance load. Tankless water heaters shall be rated at 50 percent of their input rating when calculating appliance load. Exception: D.O.T. Containers of 4 lbs. though 100 lbs. capacity are exempt from this requirement when connected to small portable appliances or outdoor cooking appliances with input ratings of 100,000 btu/hr. or less. Other exceptions to this rule shall be approved by the director.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 20:1403 (December 1994), amended LR 33:1142 (June 2007), effective July 1, 2007, amended LR 38:

§172. Maintenance

A. ASME and DOT containers, container appurtenances, piping, and equipment connected thereto shall be maintained in good mechanical condition at all times. No leaks or unsafe conditions shall exist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 25:2412 (December 1999), LR 38:

§173. Regulator Installation

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 20:1403 (December 1994), amended LR 24:468

(March 1998), LR 33:1142 (June 2007), effective July 1, 2007, amended LR 38:

§175. Pressure Test, Leak Checks, and Inspection Required

A. Pressure Tests

1. Shall be performed on all new piping systems and on piping systems that has been modified or had new piping added.

2. The length of time of the pressure test shall be not less than 1/2 hour for each 500 cubic feet of pipe volume or fraction thereof, except when pressure testing less than 10 cubic feet of pipe volume or a single family dwelling, the duration of the test may be reduced to 15 minutes.

3. The test pressure of the Pressure Test shall be 1 1/2 times the proposed operating pressure of the system but in no case less than 3 psig.

4. There shall be no gain or loss in pressure during the test. If leakage is indicated, the system shall be repaired and a new pressure test performed before placing in service.

5. The pressure source shall be isolated before the test.

6. No underground piping shall be covered until after inspection and the pressure test are made.

7. Pressure tests shall be documented in the dealer's files.

B. Leak Checks

1. Low Pressure Leak Checks

a. Shall be used on systems that receive gas at pressures of 1/2 psig or less.

b. Shall be performed the first time a tank, piping system and appliances are connected for use.

c. Shall be performed in any suspected leak situation.

d. Shall be performed the first-time service of a new customer.

e. Shall be performed in all out-of-gas and interruption of service situations. A High Pressure Leak Check will be permitted in lieu of the Low Pressure Leak Check if the dealer has documented in his files a Low Pressure Leak Check within the past 12 months for that customer or has filed such documentation with the office of the director within the past 12 months for that customer.

f. The length of time for this test shall be 3 minutes.

g. The test pressure for this test shall be 9 inches + or - 1/2 inch of water column or equivalent.

h. Low Pressure Leak Checks shall be documented in the dealer's files.

i. This leak check shall include all regulators, including appliance regulators and control valves in the system. Accordingly each individual equipment shutoff valve should be supplying pressure to its appliance for this leak check. This leak check shall prove the integrity of the 100 percent pilot shutoff of each gas valve so equipped, so the manual gas cock of each gas valve incorporating a 100 percent pilot shutoff should be in the "on" position. Pilots not incorporating a 100 percent pilot shutoff valve and all manual gas valves not incorporating safety shutoff systems shall be placed in the "off" position prior to this leak check.

j. When leakage is indicated, repairs shall be made and a new leak check performed before placing the system back into service.

k. The following protocol shall be used for performing this leak check. Insert a water manometer or

equivalent gauge into the system downstream of the final stage regulator, pressurizing the system with either fuel gas or another approved test medium to full operating pressure, close pressure service valve, observe gauge reading, lockup, should be between 10-14 inches of water column or equivalent, then release enough test medium through a range burner or other suitable means to drop the system pressure to 9 inches + or -1/2 inch in water column or equivalent. This ensures that all regulators are unlocked and the entire system is communicating to the gauging device. There shall be no loss or gain in pressure for a period of three minutes.

2. High Pressure Leak Checks

a. This leak check may be used on a system that receives gas at 1/2 psig or less, when a Low Pressure Leak Check has been performed and documented within the past 12 months by the dealer for that system. This type leak check may be performed once annually when access to the gas utilization equipment is not accessible.

b. This leak check may be used on systems that receive gas at pressures greater than 1/2 psig but less than tank pressure.

c. The length of time for this leak check is 3 minutes.

d. The test pressure for this leak check is 10 pounds below tank pressure.

e. These tests shall be documented in the dealer's files.

f. When leakage is indicated, repairs shall be made and a new leak check performed before placing the system into service.

g. The following protocol shall be used for this leak check. By inserting a pressure gauge between the container gas shutoff valve and the first stage regulator in the system, admitting full container pressure to the system and then closing the container shutoff valve. Enough gas should then be released to lower the pressure reading by 10 psi. System should then be allowed to stand for 3 minutes without an increase or decrease in the pressure gauge reading. This method will indicate if there is an open line, open valve, a standing pilot open or leak anywhere in the system and can be used only under the conditions stated in §175 B(2)(a) and (b) of this Section.

3. In out-of-gas or interruption of service situations and a leak check cannot be performed by the dealer, the procedure in §167 of this Code shall be used or the container cannot be serviced.

C. Inspections

1. Inspections shall be performed any time a pressure test, a high pressure leak check, or a low pressure leak check is performed. Exception: if the dealer has documented in his files an inspection of the system within the past 12 months for that system, no inspection is required.

2. Inspection shall include installation workmanship, all visible piping materials, connectors, appliances and other materials to ensure all materials, connectors, valves and appliances are approved for liquefied petroleum gas use.

3. Inspection shall include proper appliance installation and proper flame performance characteristics for the appliances.

4. Any materials, connectors, valves, appliances, or installation workmanship not in compliance with the codes shall be repaired, replaced, or disconnected.

5. Documentation that the inspection was performed shall be made by the dealer and retained in his files.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 20:1403 (December 1994), amended LR 24:468 (March 1998), LR 24:2312 (December 1998), LR 29:2510 (November 2003), LR 33:1142 (June 2007), effective July 1, 2007, amended LR 38:

§177. Appliance Installation and Connections

A. Use of Approved Appliances. Domestic and commercial gas consuming appliances shall not be installed unless their correctness to design, construction and performance is certified by one of the following:

1. determined by a nationally recognized testing agency adequately equipped and competent to perform such services and shall be evidenced by the attachment of its seal or label to such gas appliance. This agency shall maintain a program of national inspection of production models of gas appliances at least once each year on the manufacturer's premises. Approval by the American Gas Association Laboratories (AGA) as evidenced by the attachment of its listing symbol or approval seal to gas appliances and a certificate or letter certifying approval under the abovementioned requirements or listing by Underwriter's Laboratories Inc. (UL) be considered as constituting compliance with the provisions of this Section;

2. approved by the commission.

B. Appliance Installation and Connection

1. An appliance shall be installed in accordance with its manufacturer's instructions.

2. In the absence of complete manufacturer's instructions on installation of any appliances, installation shall be in accordance with the edition of NFPA Number 54, the National Fuel Gas Code, adopted by the commission.

C. Exceptions

1. Existing installations, where piping outlets and appliances were installed in accordance with regulations which were in effect at the time of such installation, shall remain approved. This exception includes the removal of existing appliances for servicing or replacement of appliances with the same type or of equal or better quality. This exception does not allow adding new piping, appliance locations, or new appliances where there was no pre-existing appliance without meeting §177.A and B.

2. Installation of Heaters in Residences. The following liquefied petroleum gas room heaters may be installed in a residence that is a one or two family dwelling and that is not a manufactured home, mobile home, or a modular home.

a. A listed wall-mounted liquefied petroleum gas unvented room heater equipped with an oxygen depletion safety shut-off system may be installed in the bathroom of a one or two family, residential dwelling provided that the input rating shall not exceed 6,000 Btu per hour, and combustion and ventilation air is provided in accordance with Paragraph 10.1.2 of the National Fuel Gas Code, NFPA-54, that the commission adopted.

b. A listed wall-mounted liquefied petroleum gas unvented room heater equipped with an oxygen depletion safety shut-off system may be installed in the bedroom of a one or two family, residential dwelling provided that the input rating shall not exceed 10,000 Btu per hour, and

combustion and ventilation air is provided in accordance with Paragraph 10.1.2 of the National Fuel Gas Code, NFPA-54, that the commission adopted.

3. Liquefied petroleum gas room heaters may be installed in used manufactured homes, mobile homes and modular homes as follows if they are:

a. liquefied petroleum gas listed vented heaters equipped with a 100 percent safety pilot and vent spill switch; and

b. liquefied petroleum gas listed unvented room heaters equipped with a factory oxygen depletion safety shut-off system; and

c. they are not installed in sleeping quarters or bathrooms; and

d. their installation is not prohibited by the appliance manufacturer's instructions; and

e. the input rating of the heater(s) does not exceed 20 Btu per hour per cubic foot of space; and

f. combustion and ventilation air is provided as specified in Part 9.3 of the National Fuel Gas Code, NFPA-54, 2009 edition, that the commission has adopted.

4. Exceptions, other than those listed herein, shall be approved by the director of the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 20:1403 (December 1994), amended LR 24:469 (March 1998), LR 25:2412 (December 1999), amended LR 38:

Subchapter H. Specification for Liquefied Petroleum Gas Installations at Schools and Places of Public Assembly

§179. Requirements for Plans and Specifications

A. Sketches and specifications including plot plans shall be submitted to the office of the director for approval before installation.

B. Sketch and specifications shall show the following:

1. type of building (frame, masonry, metal walls, etc.);
2. elevation from ground level to building;
3. the size and location of all gas piping and length of runs;
4. the size and location of the tank or container;
5. the location and Btu rating of all appliances;
6. the total Btu load;
7. all other details related to the proposed installation as required in §179.

C. The following is a clarification of the requirements for new sketches at schools, churches, nursing homes, and other places of public assembly:

1. Where any additional piping is added, the installation of a new appliance or the change out of an appliance with one with a higher BTU load, a new sketch is required to be submitted to the office of the director for approval.

2. Replacement of a storage tank or container requires a new sketch to be submitted to the office of the director for approval.

3. A new sketch is required when changing fuel suppliers at all places of public assembly, even when no changes are made in the liquefied petroleum gas system.

D. In all cases, an installation report is required with the installation of a container, tank, or cylinder at schools,

churches, nursing homes, and other places of public assembly.

E. The commission reserves the right to make a final inspection and witness a pressure test through an inspector of the commission before approving the sketch and allowing the system to be placed into service at all schools, churches, nursing homes, and other places of public assembly.

F. The minimum capacity of storage containers, tanks, or cylinders shall be 100 gallons capacity per each 100,000 Btu appliance load at all schools, churches, nursing homes, and other places of public assembly. Exceptions to this rule may be made by the director of this commission.

G. Fences are required for storage containers, tanks, and cylinders at all schools, all nursing homes, and all churches with schools or day-care facilities on site. Fences may be required at other places of public assembly when deemed necessary in the interest of public safety by the office of the director. The commission may approve a request for an exemption from the fencing requirements under extenuating circumstances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 20:1404 (December 1994), amended LR 24:470 (March 1998), LR 31:2568 (October 2005), amended LR 38:

Subchapter I. Adoption of Standards

§181. National Fire Protection Association Pamphlet Numbers 54 and 58

A. The Liquefied Petroleum Gas Commission hereby adopts the *National Fuel Gas Code*, 2009 edition. The National Fire Protection Association designation is *NFPA 54-2009*. The Liquefied Petroleum Gas Commission also adopts the *Standard for the Storage and Handling of Liquefied Petroleum Gases*, 2008 edition. The National Fire Protection Association designation is *NFPA 58-2008*.

B. The commission may adopt subsequent editions of these standards by a rule change in accordance with the Administrative Procedure Act.

C. Any published Liquefied Petroleum Gas Commission rules and regulations shall take precedence over the standards referenced and adopted in §181.A.

D. The commission reserves the right to make an exception to §181.A, as it applies to local conditions as it deems necessary in the interest of public safety.

1. Any installation that is in use and was installed in Louisiana that meets previous rules and regulations promulgated by this commission may remain in use until the systems require evacuation or replacement. Upon evacuating or replacing any installation, the system shall comply with §181.A.

E. The following are exceptions to the code and standard referenced in §181.A:

1. Pursuant to §5.6.6, *Protective Coatings*, NFPA 54-2009 edition, galvanized pipe and fittings, copper pipe and fittings, and copper tubing and fittings may be used to meet this requirement.

2. Pursuant to §7.1.2., *Protection against Damage*, NFPA 54-2009 edition, pipe shall be buried at a minimum to the depth of the frost line and shall be protected where there is heavy vehicular traffic and protected against physical damage where such damage is reasonably expected.

3. Pursuant to §7.1.3, *Protection against Corrosion*, NFPA 54-2009 edition, the provisions shall be considered met in Louisiana when galvanized pipe and fittings, copper pipe and fittings or copper tubing and fittings are used.

4. Pursuant to §6.24.3.14 and §6.24.3.15, *Emergency Shut-off of Power*, NFPA 58-2008 edition, the provisions of §6.24.3.14 and §6.24.3.15 shall be considered met in Louisiana if the operator has provided an alternative to shut off power in the event of a fire, accident or other emergency other than the switch(es) or circuit breaker(s) located at the dispenser(s).

6. Pursuant to §6.7.2.7, *Installation of Pressure Release Devices*, NFPA 58-2008 edition, the provisions of §6.7.2.7 shall be considered met in Louisiana notwithstanding the requirement that there be a seven foot distance from the pressure relief valve to the point of discharge.

7. Pursuant to §6.24.3.13, *Shut-Off Valve on End of Transfer Hose*, NFPA 58-2008 edition, the provisions of §6.24.3.13 shall be considered met in Louisiana if a listed quick-acting shut off valve with positive lock off or a listed globe valve is installed at the discharge end of the transfer hose.

8. Pursuant to §7.4.3.1, NFPA 58-2008 edition, the maximum permitted filling limit for any container, where practical, shall be determined by weight. DOT specification cylinders of 200 lbs. propane capacity or less that are in commerce or transportation shall be filled by weight only. Exceptions:

a. DOT cylinders filled from bobtails at customer facilities, if equipped for filling by volume and are not transported over the highways of the state of Louisiana. An example is forklift cylinders filled by bobtails and used on premises and not placed in transportation over the highways of the state of Louisiana;

b. DOT cylinders filled by customers from customer tank facilities, if equipped for filling by volume and are not transported over the highways of the state of Louisiana. An example is forklift cylinders filled by customers from their tanks and used on their premises and not placed in transportation over the highways;

c. DOT cylinders that are permanently affixed if equipped for filling by volume. Examples are motor fuel tanks or DOT cylinders permanently affixed to recreational vehicles.

9. REPEAL AND RESERVE

10. Pursuant to §5.2.2, NFPA-58-2008 edition, DOT cylinders of 100 lbs. or less shall not be filled, continued in service, or transported unless they are properly qualified or requalified for L.P. gas service, if they are in commerce or transportation. Transportation of empty cylinders for requalification or disposal shall not be a violation of this rule. DOT cylinders of 100 lbs. or more shall not be refilled, continued in service or transported unless they are properly qualified or requalified for L.P. gas service in accordance with DOT regulations, meaning in commerce and transportation. Transportation of empty cylinders for requalification or disposal shall not be a violation of this rule. Qualification or requalification shall be in accordance with C-3.2 of Annex C, NFPA 58- 2008 edition. In addition to the requirements of C-3.2 of Annex C, NFPA 58-2008

edition, each cylinder that has successfully passed requalification shall be marked with a RIN issued by the DOT in accordance with applicable DOT statutes and/or regulations. This requirement shall be effective for all requalifications after May 8, 2003. Variation from the marking requirement may be approved by the Associate Administrator of the DOT and those variations shall be accepted by Louisiana as being in compliance.

11. Repealed and Reserved.

12. Pursuant to §9.3.2.9, NFPA 58-2008 edition, containers having an individual water capacity not exceeding 108 lb. (49 kg) [nominal 45 lb. (20 kg) LP-Gas] capacity transported in open vehicles and containers having an individual water capacity not exceeding 10 lb. (4.5 kg) [nominal 4.2 lb. (2 kg) LP-Gas] capacity transported in enclosed spaces of the vehicle shall be permitted to be transported in other than the upright position, however may not be transported in the upside-down position or resting on an individual water capacity exceeding 108 lb. (49 kg) [nominal 45 lb. (20 kg) LP-Gas] capacity transported in open vehicles and containers having an individual water capacity exceeding 10 lb. (4.5 kg) [nominal 4.2 lb. (1.9 kg) LP-Gas] capacity transported in enclosed spaces shall be transported with the relief device in direct communication with the vapor space.

13. Pursuant to §8.4.2.2, NFPA 58-2008 edition, the following provisions shall be met:

a. All curb stops used as crash protection shall be at least 5 feet from the cage, 5 inches high and staked into the ground.

b. All posts, if used as crash protection, shall be metal at least 2 inches in diameter, 20 inches above ground level, at least 2 feet from the cage and no more than 4 feet apart.

c. Each cage shall have a "No Smoking" sign, the name of the permit holder and the suppliers name affixed to the cage.

d. All ignition sources, including any appliances, or the cabinets of appliances, such as coke machines, water coolers, electric dispensing machines etc., shall be at least 5 feet from the cage.

e. Cages shall be at least 5 feet from points of public gatherings such as pay phones, benches, smoking areas, and break areas.

f. Cages housing L.P. Gas Dot cylinders shall be located a minimum of 5 feet from any line of adjoining property.

14. The provision §5.20.6, NFPA 58-2008 edition (the use of approved appliances for mobile homes, manufactured homes and recreational vehicles), is superceded by §177(A).

15. Pursuant to §6.6.1.6, *Floatation Prevention-Clarification*, NFPA 58-2008 edition, installations requiring flotation prevention measures may use either commission's guidelines or use methods or products from a qualified agency with proper documentation acceptable to the commission.

16. In addition to the provisions in §7.3.5, *Piping in floors of buildings*, NFPA-54-2009 edition and §6.9, *Underground Piping*, NFPA-54-2008 edition and due to the possibility of soil substance and foundation failures in buildings, all LP gas piping shall be properly protected in a suitable leak free conduit that would be installed under

and/or through any concrete slab or masonry wall of any building.

17. Pursuant to §6.18.2.1, *Installation of Liquid Transfer Facilities*, NFPA 58-2008 edition, when vented L.P. gas is used as the sole method of transferring liquid L.P. gas from one container to another (i.e. pressure differential, gravity filing), the distances in table 6.5.3 shall be doubled.

18. Pursuant to §6.23, *L.P. Gas on Vehicles (other than engine fuel systems)*, NFPA 58-2008 edition, the office of the director may establish inspection procedures (including decals of approval) for mobile units utilizing L.P. gas to fuel appliances. These inspection procedures would be in addition to applicable regulations of NFPA-58, 2008 edition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 20:1404 (December 1994), amended LR 24:470 (March 1998), LR 25:1263 (July 1999), LR 25:2412 (December 1999), LR 27:2257 (December 2001), LR 31:2568 (October 2005), LR 37:913 (March 2011), amended LR 38:

§183. Use of Liquefied Petroleum Gas as a Refrigerant Prohibited

A. No person, firm, or corporation shall use, sell, or distribute liquefied petroleum gas for use in mobile air conditioning systems.

B. To determine if a refrigerant is liquefied petroleum gas, the proper shipping name shall be used. Proper shipping names with a U.N. number and a hazard class and division number of liquefied petroleum gas per the DOT hazardous materials tables shall be prima facie evidence that the refrigerant is liquefied petroleum gas and is prohibited.

C. Any advertising or other literature published by the manufacturer of a refrigerant promoting it as a replacement or drop-in for CFR-12 or HFC 134a, or both, shall be prima facie evidence that it is being sold for mobile air conditioning systems and is prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 23:990 (August 1997), amended LR 29:2511 (November 2003), amended LR 38:

Chapter 2. School Bus and Mass Transit Installations [formerly Chapter 12]

Editor's Note: This Chapter applies to liquefied petroleum gas systems supplying liquefied petroleum gas to propel school buses and mass transit vehicles.

§201. Applications/Sketches and Approval of School Bus and Mass Transit Vehicles; Final Inspections; Registrations; Renewal Registrations

A. Prior to the initial installation of a liquefied petroleum gas system used as a motor fuel system on any school bus or mass transit vehicle, either public or private, an application/sketch shall be submitted to a commission inspector for review and initial approval. The name of the dealer making the installation shall be stated on the application/sketch.

1. Exceptions

a. When an original equipment manufacturer (OEM) installed the liquefied petroleum gas system, the initial

installation review and initial approval requirement of Part A is waived; however an application/sketch, registration, and final inspection shall be performed prior to placing into service.

b. When the installation of the liquefied petroleum gas system is made out-of-state, the initial installation review and initial approval requirement of Part A is waived; however, the application/sketch, registration, and final inspection shall be performed prior to placing into service.

B. After installation of the liquefied petroleum gas system but prior to placing into service, the vehicle(s) shall be registered with the commission, by means of the application/sketch and evidenced by a registration decal affixed to the vehicle.

C. A renewal registration shall be made annually by the owner, between February 1 and April 30. Renewal registration forms shall be mailed from the office of the director to the previous year's registrants.

D. After installation of the liquefied petroleum gas system but prior to placing into service, a final inspection shall be made by an inspector of the commission.

E. A liquefied petroleum gas dealer or owner shall not fuel any school bus/mass transit vehicle with liquefied petroleum gas to which a current registration decal is not permanently affixed.

F. It shall be a violation of the commission rules and regulations for an owner to operate any school bus/mass transit vehicle which is propelled by liquefied petroleum gas, to which a current registration decal is not permanently affixed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 18:866 (August 1992), amended LR 24:471 (March 1998), LR 26:1488 (July 2000), LR 38:

§203. Inspections

A. A final inspection by an inspector of the commission is required on all newly installed liquefied petroleum gas systems.

B. The commission reserves the right to make an inspection of a liquefied petroleum gas system at any time.

C. All school bus/mass transit vehicles with renewal registrations shall be inspected between May 1 and July 31 by an inspector of the commission. It shall be a violation of the commission rules and regulations to operate a school bus/mass transit vehicle without the required annual inspection.

D. A liquefied petroleum gas dealer shall not fuel any school bus/mass transit vehicle which has been condemned or placed out-of-service by the commission and notification published in an all dealer letter (A.D.).

E. No liquefied petroleum gas system shall be placed into service on any school bus/mass transit vehicle which does not comply with this Chapter and Chapter 11 of NFPA 58 of the 2009 edition, that the commission has adopted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 24:471 (March 1998), amended LR 26:1488 (July 2000), amended LR 38:

§205. Installation of Liquefied Petroleum Gas Systems Used as Engine Fuel System for School Bus/Mass Transit Vehicles

A. Installation of a liquefied petroleum gas system used as an engine fuel system for school bus/mass transit vehicles shall be in accordance with the applicable sections of Chapter 11 of the NFPA 58 of the 2009 edition that the commission has adopted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 24:471 (March 1998), amended LR 26:1488 (July 2000), amended LR 38:

§207. Fueling

A. Vehicles covered in this Chapter are prohibited from being fueled at schools and other places of public assembly within 50 feet of the property line.

B. Vehicles are prohibited from being fueled while passengers are on board or within 50 feet of liquid transfer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 18:866 (August 1992), amended LR 24:472 (March 1998), amended LR 38:

Chapter 3. Emergency Powers

§301. Procedure

A. During a declared emergency or disaster by the governor, the commission may delegate authority to the director for the purposes of waving any rule under Part IX of Title 55 that does not materially affect safety.

B. The delegation shall be by majority vote of the commission.

C. If the commission cannot meet in person to vote on the delegation due to an inability to travel because of the declared emergency or disaster, the director may make contact with each commissioner by any form of communications available at the time.

D. The director shall make a written record of each vote cast by the individual commissioners. This record shall contain:

1. the date of the vote;
2. the name of the commissioners available for vote;
3. the method of communication used to contact each commissioner including any contact information;
4. the affirmative or negative vote of each commissioner.

E. If the director cannot contact enough commissioners to constitute a quorum, he may act on behalf of the commission during the declared emergency or disaster. Once the commission is able to meet, it shall review all exemptions granted by the director during the declared emergency or disaster. The commission may ratify any actions taken on behalf of the commission by the director.

F. The emergency powers of the director under this Section shall expire upon either of the following:

1. a majority vote of the commission;
2. the expiration of the declaration of emergency or disaster by the governor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 36:2571 (November 2010), LR 38:

Chapter 15. Sale, Storage, Transportation and Handling of Anhydrous Ammonia

NOTE: This Chapter applies specifically to the sale, storage, handling, and transportation of anhydrous ammonia over Louisiana highways and the sale, construction and use of anhydrous ammonia containers and equipment.

Subchapter A. New Dealers

§1501. Prerequisite

A. As a prerequisite to engage in the anhydrous ammonia business in the state of Louisiana, an applicant shall first comply with the applicable rules and regulations of the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:898 (July 1993), LR 38:

§1503. Definitions

Mobile Air Conditioning System—mechanized vapor compression equipment which is used to cool the driver's or passenger's compartment of any motor vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:898 (July 1993), LR 38:

§1505. Applications

A. Any person, firm, or corporation desiring to enter the anhydrous ammonia business in the state of Louisiana shall file formal application for a permit with the commission. These applications for permits shall be administratively granted by the office of the director upon complying with all commission requirements, such as payment of the applicable fees, qualification of personnel, providing proof of insurance and if applicable, final approval of a sketch, registration and safety inspection of tanker trucks. The commission shall ratify the permits at the first subsequent commission meeting after at least 20 days have elapsed after the permit has been administratively granted by the office of the director. Presence of applicant for the permit or his authorized representative is required at the commission meeting when the application for a permit is ratified. The applicant's supplier is prohibited from being the authorized representative. Only with special approval of the commission, under extenuating circumstances, shall the commission allow the applicant for a permit to be represented by another party other than a principal officer, director, manager, or attorney. The formal application form(s) shall be furnished by the commission upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular

Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:898 (July 1993), LR 33:1143 (June 2007), effective July 1, 2007, amended LR 38:

§1507. Requirements

A. Before any permit may be issued from the office of the director, all applicants shall have complied with the following.

1. Shall deposit filing fee of \$100 for Class A1; \$50 for Class A3; and \$25 for all others. This fee shall accompany application.

2. Formal application for a permit shall be submitted to the office of the director.

3. Shall have on file in the office of the director proof of insurance, issued by a Louisiana licensed agent, in the minimum sum of \$1,000,000, in the classes of insurance as required by the commission. This proof of insurance may be a copy of the policy with an endorsement that the insurance company will give at least 10 days notice to the commission before cancellation, or on a commission proprietary certificate of insurance, showing kinds and amount in force, with certificate bearing the clause that in the event the insurance company intends to cancel, the insurance company will notify the director of the commission 10 days prior to the date of cancellation, or a binder of insurance coverage, within date, will be acceptable as proof of insurance until the policy or proprietary certificate of insurance can be issued. The commission shall provide the proprietary certificate of insurance form on its public web site for downloading or will provide copies of the proprietary certificate of insurance form via facsimile or via U.S. mail upon request.

4. Where applicable, storage tank and location shall be approved. Storage tanks shall not be located inside corporate limits without written permission of the governing body.

a. All sketches or drawings of proposed bottle filling plants, liquid withdrawal systems and/or installations utilizing ASME containers shall be submitted to the office of the director and approved before system is put into operation.

5. Where applicable, applicant shall provide adequate transport and/or delivery trucks satisfactory to the commission. Each transport and/or delivery truck used in Louisiana shall be registered in Louisiana and shall be inspected annually by the commission or other qualified agency acceptable to the commission, however any transport and/or delivery truck registered and not being used in Louisiana shall either have the inspection required of those used in Louisiana or apply for a waiver of the inspection, in writing, prior to its inspection due by date. Transports and/or delivery trucks granted a waiver of inspection shall be inspected prior to their use in Louisiana. Each transport and/or delivery truck registered in Louisiana shall have an annual registration fee of \$50 paid and a valid registration decal affixed to the transport and/or delivery truck.

6. Shall have paid permit fee in the amount of \$300 to the commission of the state of Louisiana. For all succeeding years the permit fee shall be 1/2 of 1 percent of gross annual sales of anhydrous ammonia or \$300, whichever is greater.

7. Persons in charge of operations shall furnish proof satisfactory to the commission and the office of director that they have had experience in and are familiar with and will abide by all safety precautions necessary in the conducting of the business for which they are granted a permit.

8. All service and installation personnel, anhydrous ammonia transfer personnel and tank truck drivers shall have a card of competency from the office of the director. All permit holders, except Class A-3X permit holders, shall have at least one card of competency issued to their permit. A card of competency will be issued to an applicant upon receipt of a \$20 examination fee and successfully passing the competency test, providing the applicant holds some form of identification acceptable to the commission. The commission may accept as its own a reciprocal state's examination which contains substantially equivalent requirements. This shall be evidenced by a letter from the issuing authority or a copy of a valid card issued by the reciprocal state. All applicable fees shall be paid prior to issuing the card.

a. All cards of competency shall be renewed annually by the permit holder. There will be a charge of \$10 per card for renewals. After expiration, there will be a penalty of \$3 per card. There is a charge of \$10 for replacing a lost card, change of employer, or change of company name. A card with an improper employer or company name shall not be valid.

b. All employees who are qualified by this commission and have been issued certificates of competency shall have their certificates of competency on their person while on duty. Should an employee lose his card, the dealer shall notify the office of the director within 10 days for the issuance of a new card. If an employee terminates his employment with the dealer for whom the card is issued, the card shall be picked up by the dealer and returned to the office of the director immediately.

9. Shall have necessary experience in anhydrous ammonia business or have employed a recognized operator of such experience and competency. The commission reserves the right to demand that such knowledge and competency be proved by a written examination.

10. Where applicable shall provide adequate switch track or tank loading and unloading facilities. All auxiliary equipment such as pumps, hose, electrical switches, etc., shall be, where possible, Underwriters Laboratory or any other nationally recognized testing agency approved for anhydrous ammonia. If equipment is not so approved, drawings and descriptions shall be submitted to the office of the director for his approval before installation.

11. Applicants for change of name shall deposit a filing fee of \$25 with a formal application for a name change. The office of the director shall administratively grant the name change after all commission requirements are met. The commission shall ratify the name change at the next subsequent commission meeting after which a minimum of 20 days have elapsed since the administrative granting of the name change. A representative of the new firm or corporation is required to be present when the application is ratified by the commission. All certificates of competency shall be changed to new name.

12. Any permit holder who does not actively engage in business for which permit was granted, for a period of six

consecutive calendar months, may have his permit revoked by the Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:898 (July 1993), LR 25:2413 (December 1999), amended LR 27:423 (March 2001), repromulgated LR 27:565 (April 2001), amended LR 33:1144 (June 2007), effective July 1, 2007, amended LR 38:

§1509. Compliance with Rules

A. Compliance with all other applicable rules and regulations is a mandatory requirement for all permit holders.

1. The commission may assess a civil penalty of not less than \$100 nor more than \$1000 for each violation of the rules and regulations adopted by the commission. Civil penalties may be assessed only by a ruling of the commission based on an adjudicatory hearing held in accordance with the Administrative Procedure Act. The commission may institute civil proceedings to enforce its ruling in the district court for the parish in which the commission is domiciled or the district court for the parish in which the violation occurred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:899 (July 1993), LR 25:2413 (December 1999), amended LR 38:

§1511. Re-Application

A. Any person, firm or corporation who has made application for a permit to enter the anhydrous ammonia business and whose request for permit has been denied, may re-submit an application 90 days after date of denial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:899 (July 1993), LR 38:

§1513. Classes of Permits

A. The commission shall issue upon application the following classes of permits.

1. Class A1. Holders of these permits may enter any phase of the anhydrous ammonia business.

a. Shall file formal application for a permit with the commission. These applications for permits shall be administratively granted by the office of the director, upon complying with all commission requirements, such as payment of the applicable fees, qualification of personnel, providing proof of insurance and if applicable, final approval of a sketch, registration and safety inspection of tanker

trucks. The commission shall ratify the permits at the first subsequent commission meeting after at least 20 days have elapsed after the permit has been administratively granted by the office of the director. Presence of applicant for the permit or his authorized representative is required at the commission meeting when the application for a permit is ratified. The applicant's supplier is prohibited from being the authorized representative. Only with special approval of the commission, under extenuating circumstances, will the commission allow the applicant for a permit to be represented by another party other than a principal officer, director, manager, or attorney. The formal application form(s) shall be furnished by the commission upon request.

b. Shall deposit filing fee of \$100 with application.

c. Holders of these permits shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 covering:

- i. products;
- ii. manufacturers and contractors; and
- iii. automobile liability.

d. Storage tank and location shall be approved. Storage tanks shall not be located inside corporate limits without permission of the governing body.

e. Shall pay permit for first year's operations in the amount of \$300 to the commission. For all succeeding years the permit fee shall be one-half of 1 percent of the gross annual sales of anhydrous ammonia or \$300, whichever is greater.

f. Person in charge of operations shall be satisfactory to the commission and the office of director.

g. All service and installation personnel, anhydrous ammonia transfer personnel, and tank truck drivers shall have a card of competency from the office of the director.

h. Shall have necessary experience in anhydrous ammonia business or have employed a recognized operator of such experience and competency. The commission reserves the right to demand that such knowledge and competency be proved by a written examination.

i. Shall provide adequate switch track of tank loading and unloading facilities. All auxiliary equipment such as pumps, hose, electrical switches, etc., shall be, where possible, Underwriters Laboratories or any other nationally recognized testing agency approved for anhydrous ammonia. If equipment is not so approved, drawings and descriptions shall be submitted to the office of the director for his approval before installation.

j. No truck shall be parked on a street or highway at night in any city, town or village, except that it be for the purpose of serving a customer, then only in an emergency.

k. Compliance with all other applicable rules and regulations is a mandatory requirement.

1. The name of the dealer or permit holder shall appear on all tank trucks, storage tank sites, and/or advertising being used by the dealer.

2.a. Shall file formal application for a permit with the commission. These applications for permits shall be administratively granted by the office of the director, upon complying with all commission requirements, such as payment of the applicable fees, qualification of personnel, providing proof of insurance and if applicable, final approval of a sketch, registration and safety inspection of tanker trucks. The commission shall ratify the permits at the first

subsequent commission meeting after at least 20 days have elapsed after the permit has been administratively granted by the office of the director. Presence of applicant for the permit or his authorized representative is required at the commission meeting when the application for a permit is ratified. In no case will the applicant's supplier be the authorized representative. Only with special approval of the commission, under extenuating circumstances, will the commission allow the applicant for a permit to be represented by another party other than a principal officer, director, manager, or attorney. The formal application form(s) shall be furnished by the commission upon request

b. Shall deposit filing fee of \$25 with application.

c. Holders of these permits shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 covering products, manufacturers and contractors, and automobile liability.

d. Shall pay permit for first year's operations in the amount of \$300 to the commission. For succeeding years the permit fee shall be \$300.

e. Person in charge of operations shall be satisfactory to the commission and the office of the director.

f. All service and installation personnel shall have a certificate of competency from the office of the director.

g. Shall have necessary experience in anhydrous ammonia business or have employed a recognized operator of such experience and competency. The commission reserves the right to demand that such knowledge and competency be proved by a written examination.

h. Compliance with anhydrous ammonia law and all other applicable rules and regulations is a mandatory requirement.

3. Class A3. Holders of these permits may engage in the filling of approved cylinders with anhydrous ammonia on their premises, but shall not deliver anhydrous ammonia.

a. Shall file formal application for a permit with the commission. These applications for permits shall be administratively granted by the office of the director, upon complying with all commission requirements, such as payment of the applicable fees, qualification of personnel, providing proof of insurance and if applicable, final approval of a sketch, registration and safety inspection of tanker trucks. The commission shall ratify the permits at the first subsequent commission meeting after at least 20 days have elapsed after the permit has been administratively granted by the office of the director. Presence of applicant for the permit or his authorized representative is required at the commission meeting when the application for a permit is ratified. The applicant's supplier is prohibited from being the authorized representative. Only with special approval of the commission, under extenuating circumstances, will the commission allow the applicant for a permit to be represented by another party other than a principal officer, director, manager, or attorney. The formal application form(s) shall be furnished by the commission upon request.

b. Shall deposit filing fee of \$25 with application.

c. Holders of these permits shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 covering products liability.

d. Storage tank and location shall be approved by the commission's authority having jurisdiction. All tanks

located in corporate limits shall also be approved by the governing body.

e. Shall pay permit for first year's operations in the amount of \$300 to the commission. For all succeeding years the permit fee shall be 1/2 of 1 percent of the gross annual sales of anhydrous ammonia or \$300, whichever is greater.

f. Person in charge of operations shall be satisfactory to the commission and the office of the director.

g. All employees handling anhydrous ammonia shall have a certificate of competency from the office of the director.

h. Shall have necessary experience in anhydrous ammonia business or have employed a recognized operator of such experience and competency. The commission reserves the right to demand that such knowledge and competency be proved by a written examination.

i. Compliance with all other applicable rules and regulations is a mandatory requirement.

j. The dealer's name shall appear on all stationary storage tank sites.

4. Class A3-X. Holders of these permits may engage in the exchange of approved anhydrous ammonia cylinders on their premises, but shall not fill cylinders.

a. Shall file formal application for a permit with the commission. These applications for permits shall be administratively granted by the office of the director, upon complying with all commission requirements, such as payment of the applicable fees, qualification of personnel, providing proof of insurance and if applicable, final approval of a sketch, registration and safety inspection of tanker trucks. The commission shall ratify the permits at the first subsequent commission meeting after at least 20 days have elapsed after the permit has been administratively granted by the office of the director. Presence of applicant for the permit or his authorized representative is not required at the commission meeting when the application for a permit is ratified. The formal application form(s) shall be furnished by the commission upon request.

b. Shall deposit filing fee of \$50 with application.

c. Holders of these permits shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 covering products and automobile liability.

d. Shall pay permit for first year's operations in the amount of \$300 to the commission. For all succeeding years, the permit fee shall be 1/2 of 1 percent of the gross annual sales of anhydrous ammonia or \$300, whichever is greater.

e. Storage location shall be approved by the commission's authority having jurisdiction. All tanks located in corporate limits shall also be approved by the governing body.

f. Cylinder delivery trucks shall comply with CFR 49 of the DOT specifications.

g. Person in charge of operations shall be satisfactory to the commission and the office of the director.

h. All employees handling anhydrous ammonia shall have a certificate of competency from the office of the director.

i. Compliance with all other applicable rules and regulations is a mandatory requirement.

5. Class A4. Holders of these permits may transport anhydrous ammonia by motor vehicle over the highways of the state of Louisiana but shall not sell product in the state.

This permit may be secured from the office of the director upon receipt of the following:

a. Shall file formal application for a permit with the commission. These applications for permits shall be administratively granted by the office of the director, upon complying with all commission requirements, such as payment of the applicable fees, qualification of personnel, providing proof of insurance and if applicable, final approval of a sketch, registration and safety inspection of tanker trucks. The commission shall ratify the permits at the first subsequent commission meeting after at least 20 days have elapsed after the permit has been administratively granted by the office of the director. Presence of applicant for the permit or his authorized representative is required at the commission meeting when the application for a permit is ratified. The applicant's supplier is prohibited from also being the authorized representative. Only with special approval of the commission, under extenuating circumstances, will the commission allow the applicant for a permit to be represented by another party other than a principal officer, director, manager, or attorney. The formal application form(s) shall be furnished by the commission upon request.

b. Shall deposit filing fee of \$25 with application.

c. Shall pay permit fee for first year's operations in the amount of \$300 to the commission of the state of Louisiana. For all succeeding years the permit fee shall be \$300.

d. Holders of these permits shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 automobile liability.

e. All trucks traveling in Louisiana shall conform to CFR 49 of the DOT specifications.

f. All transport trucks are subject to inspection and approval of the commission.

g. No truck shall be parked on a street or highway at night in any city, town, or village, except that it be for the purpose of serving a customer and this only in an emergency.

h. All transport and tank truck drivers shall have a certificate of competency from the office of the director.

i. Compliance with all other applicable rules and regulations is a mandatory requirement.

j. The dealer's name shall appear on all tank trucks which require registration with the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:899 (July 1993), LR 25:2413 (December 1999), amended LR 27:423 (March 2001), repromulgated LR 27:565 (April 2001), LR 33:1144 (June 2007), effective July 1, 2007, amended LR 38:

Subchapter B. Dealers

§1515. Compliance with Rules and Act

A. Dealers shall comply with R.S. 3:1355 and the rules and regulations of the commission in order to obtain a permit and to avoid cancellation of said permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular

Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:901 (July 1993), amended LR 38:

§1517. Fine

A. After 15 days notice to appear before the commission for purposes of a trial and said trial is held, the commission may impose a fine in lieu of cancellation of permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:902 (July 1993), amended LR 38:

§1519. Expiration of Permit

A. All permits or registrations shall expire at midnight on the date of their expiration.

B. All permits or registrations renewed after their expiration date shall have an administrative penalty of 5 percent of the permit or registration fee due added for each month or fraction thereof, not to exceed 25 percent of the amount of the permit or registration fee due.

C. All permits or registrations renewed after their expiration date shall have administrative interest of 1 percent of the permit or registration fee due added for each month or fraction thereof to the amount of the permit or registration fee due.

D. After the expiration of a permit or registration fee renewal date, by five days, any dealer continuing in operation without the payment of the fee, any administrative penalty, and any administrative interest due, shall be considered as operating in violation of R.S. 3:1356(A) and the rules and regulations of the commission. The commission may assess a civil penalty in accordance with R.S. 3:1357 or may suspend, cancel or revoke said permit or registration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:902 (July 1993), LR 27:423 (March 2001), amended LR 38:

§1521. Qualified Personnel

A. All service and installation personnel, anhydrous ammonia transfer personnel, and tank truck drivers shall have a card of competency from the office of the director. Where new persons are employed, they shall not be placed in charge of making installations, servicing equipment, or delivering anhydrous ammonia until they have passed the examination given by the director and a card showing their competency has been issued to them.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular

Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:902 (July 1993), amended LR 38:

§1523. Report Accidents

A. Any accident involving anhydrous ammonia or the transportation of anhydrous ammonia which causes injury to employees, property damage, injury to other persons, a fire or an accidental release of anhydrous ammonia that is reportable under the Louisiana Right-To-Know Law shall be reported by that dealer in writing to the office of the director as soon as possible but not later than 48 hours. The office of the director shall accept, in lieu of the required report in writing, data and information from the information system established under the Hazardous Materials Information Development, Preparedness and Response Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:902 (July 1993), LR 25:2414 (December 1999), LR 38:

§1525. Insurance

A. Insurance requirements for an individual firm or corporation having a permit shall be the same as required of a new dealer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:902 (July 1993), LR 38:

§1527. Compliance with Rules

A. Compliance with all other applicable rules and regulations is a mandatory requirement for all permit holders.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:902 (July 1993), amended LR 38:

§1529. Condemnation of Tanks

A. Any anhydrous ammonia storage container corroded, pitted or worn to 20 percent of the thickness of the head, shell plate, or stand pipe shall be condemned for further storage of anhydrous ammonia, provided the shell thickness is not less than 3/16 inch.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular

Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:902 (July 1993), LR 38:

§1531. Improper Installation

A. A dealer shall not serve any anhydrous ammonia system which the dealer knows is not installed pursuant to the commission regulations or is in a dangerous condition. All new installations or reinstallations shall be checked by the dealer for tightness of lines, poor workmanship, use of unapproved pipe or equipment or use of poor piping design. All improper installations shall be corrected before the dealer services such installation or reinstallation with anhydrous ammonia for the first time. Any subsequent servicing dealer shall not be responsible for unauthorized changes in or failures of an existing system or connected equipment.

1. Anyone violating this Section shall also be liable for all damages resulting from an accident or explosion involving that shipment. The liability imposed by this Section shall not be delegated by contract or practice to any transporter or subcontractor responsible for the transportation of anhydrous ammonia.

2. A permit may be suspended or revoked by the commission whenever the commission has assessed two or more penalties against a dealer for willful violation of or failure to comply with such rules and regulations provided the second or succeeding penalty or penalties have been imposed for violations of or failure to comply with the regulations of the commission committed after the imposition of the first penalty or forfeiture, reserving to the dealer the right to resort to the courts for reinstatement of the permit suspended or revoked. The commission may suspend or revoke the permit of any person who violates the provisions of R.S. 3:1355 or who fails to pay any civil penalty imposed by the commission under the provisions of R.S. 3:1357 within 30 days after the assessment becomes final. Any dealer who continues to operate after such permit is revoked or during the period of such suspension shall be liable to prosecution under the provisions hereof in the same manner as if no such permit had ever been issued. A permit may be revoked or suspended only by a ruling of the commission based on adjudicatory hearing held in accordance with the Administrative Procedure Act. The commission may institute civil proceedings to enforce its rulings in the district court for the parish in which the commission is domiciled or in the district court for the parish in which the violation occurred.

3. No dealer shall service an anhydrous ammonia system, tank or another dealer after having received notification by the commission that the system, tank or dealer is not in compliance with these rules and regulations. An AD letter posted on the Commission's public website which states that a system, tank or dealer is not in compliance shall constitute notification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:902 (July 1993), LR 27:423 (March 2001), amended LR 38:

§1533. Customer Notification

A. Each dealer shall transmit a notice once each year to each customer stating that anhydrous ammonia systems are potentially dangerous, that a leak in the system could result in an injury and that systems should be inspected periodically.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:903 (July 1993), LR 38:

§1535. Inspections

A. Each dealer facility subject to the regulations of the commission shall submit to an inspection by a representative of the commission, which inspections may be conducted without prior notice by the commission or its representative.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:903 (July 1993), LR 38:

§1537. Dealer Permit Requirements

A. Permits required under these general requirements shall not be transferred. All dealers, regardless of operation, shall hold a permit and shall not operate under a permit of another dealer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:903 (July 1993), amended LR 38:

§1539. Testing of Tanks

A. The director of commission reserves the right to require an internal hydrostatic pressure test on bulk storage or nurse tanks.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:903 (July 1993), amended LR 38:

§1541. Sketches

A. A copy of all anhydrous ammonia installation plans and specifications including plot plans shall be submitted to the office of the director for approval prior to the commencement of work on the installation.

B. Such plans shall show the following:

1. the distance of container from line of adjoining property, highways, main line of railroads, places of public assembly, institutional occupancy (such as hospitals, nursing homes, schools) and dug wells;
2. size and location of tank;
3. the size and location of all pipe and the length of all runs;
4. all other details as related to the proposed installation as required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:903 (July 1993), amended LR 38:

§1543. Inspections and Transport/Delivery Truck Registration Decals

A. Dealers shall inspect their customer's nurse tanks up to 3,000 gallons annually. A report showing proof of inspection shall be mailed to the office of the director by the twentieth of the month following inspection.

1. The above inspection shall be good for one year only.

B. Any bulk storage container (over 3,000 gallons) shall be inspected and tagged by an inspector of the commission on an annual basis.

1. The above inspection shall be good for one year only.

C. Any system being serviced for the first time shall be inspected in accordance with the provisions of Subsection A and B above, whichever may apply.

D. Dealers who operate transport and/or delivery trucks in the state of Louisiana shall file Form DPSP 8045 (R/97) with the office of the director between the dates of February 1 and April 30 each year to register and pay the required registration fees on all transport and/or delivery trucks used in Louisiana. New equipment and equipment being used for the first time in Louisiana and not registered during the registration period shall be registered and inspected before operating over the highways of the state. Upon payment of the required fee, a registration decal will be issued on Form 8044 (R/97) by the office of the director or a registration decal by a commission inspector to be displayed on the registered equipment. It shall be a violation of the commission rules to operate a transport and/or delivery truck over the highways of the state without the registration decal affixed.

E. Safety inspections are required on all transport and/or delivery trucks requiring registration. The required safety inspection shall be performed on all transport and/or delivery trucks registered on Form 8045 (R/97) and used in Louisiana, within a three month period prior to or a three month period subsequent to their registration. Safety

inspections on transport and/or delivery trucks registered on Form 8045 (R/97) and not being used currently in Louisiana shall either be inspected the same as those being used or apply for a waiver of the inspection, in writing, prior to its inspection due by date. Transport and/or delivery trucks granted a waiver of inspection shall be inspected prior to their use in Louisiana. Safety inspections shall be performed by a commission inspector or a qualified agency acceptable to the commission with acceptable documentation that a safety inspection has been performed by that qualified agency. Safety inspections by an inspector of the commission shall be free of charge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:903 (July 1993), LR 25:2414 (December 1999), amended LR 38:

Subchapter C. Forms and Reports

§1545. Installation Report

A. An installation report form shall be used for all installations and reinstallations of DOT and ASME containers and shall be retained in dealer's file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:903 (July 1993), amended LR 38:

Subchapter D. Adoption of Standard

§1547. National Standard

A. The commission hereby adopts the American National Standards Institute, Safety Requirements for the Storage and Handling of Anhydrous Ammonia, CGA-G-2.1, ANSI K61.1 of 1989 except for Section 8 regarding systems mounted on railcar structures.

B. The commission may adopt subsequent editions of these standards by a rule change in accordance with the Administrative Procedure Act.

C. Any published rules and regulations shall take precedence over the standard referenced in Subsection A.

D. The commission reserves the right to make exceptions to any rule adopted in §1547.A as it applies to local conditions as it may deem necessary in the interest of public safety.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:903 (July 1993), LR 29:2511 (November 2003), amended LR 38:

Family Impact Statement

1. The proposed Rule will not affect the stability of the family.
2. The proposed Rule will not affect the authority and rights of persons regarding the education and supervision of their children.
3. This Rule will not affect the functioning of the family.
4. This Rule will not affect the family earnings or family budget.
5. This Rule will not affect the behavior or personal responsibility of children.
6. The action proposed is strictly a state enforcement function. Therefore, it will have no effect on the ability of the family or local government to perform the function as contained in the proposed Rule.

Small Business Impact Statement

The impact of the proposed Rule on small businesses has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

Interested persons may submit written comments to Ms. Melinda L. Long, Attorney for L.P. Gas Commission, DPS/Office of Legal Affairs, Post Office Box 66614, Slip B-4, Baton Rouge, LA 70896. Written comments will be accepted through the close of business on February 17, 2012.

John W. Alario
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Liquefied Petroleum Gas

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
There is no anticipated implementation costs or material savings to state or local governmental units resulting from the proposed rule. The proposed rule amendment reflects changes adopted by the Commission pursuant to updates to the National Fire Protection Association's Liquefied Petroleum Gas Code 58, 2008 edition and its National Fuel Gas Code 54, 2009 edition. The proposed rule changes also make technical changes to improve readability, codify current practices by the Commission regarding utilization of its statutory authority to regulate the propane industry, repeal provisions for certain permits which are no longer issued by the Commission, and permit public website notification of non-compliance in lieu of a certified letter to all dealers. The liquefied petroleum gas law is enforced only on the state level.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no anticipated effect on revenue collections for state or local governmental units as a result of this rule change.

The repealed permit fees are for permits which are no longer issued by the Commission.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is no anticipated effect on costs and/or economic benefits to directly affected persons or non-governmental groups as a result of this rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and/or employment as a result of this rule change.

John W. Alario
Executive Director
1201#086

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Veterans Affairs
Veterans Affairs Commission**

Veterans Affairs (LAC 4:VII.Chapter 9)

The Louisiana Department of Veterans Affairs hereby gives notice that it intends to adopt new Rules pertaining to the Office of the Secretary, in accordance with R.S. 36:781-786, and amend current Rules pertaining to the Veterans Affairs Commission, the State Aid Program, and Veterans Homes, as approved by the Veterans Affairs Commission.

Sections 903, "Committees," 909, "Policies of the Department," and 957, "Housing Policy," are being repealed.

Section 901, "Officers," is being amended and renumbered as Section 903, "Officers," (§903, "Committees," being repealed in this proposed Rule), to accommodate newly promulgated Sections to appear at the beginning of the Chapter.

**Title 4
ADMINISTRATION
Part VII. Governor's Office**

Chapter 9. Veterans Affairs

§901. Office of the Secretary

A. There shall be a secretary of veterans affairs who shall be appointed by the governor with consent of the senate. Any person appointed as secretary shall be a veteran. He shall serve at the pleasure of the governor at a salary fixed by the governor which salary shall not exceed the amount approved for such position by the legislature while in session. The secretary shall serve as the executive head and chief administrative officer of veterans affairs and shall have the responsibility for the policies of the department and for the administration, control, and operation of the functions, programs, and affairs of the department as provided by law. He shall perform his functions under the general control and supervision of the governor.

B. There may be a deputy secretary of veterans affairs who shall be appointed by the secretary with consent of the senate and who shall serve at the pleasure of the secretary at a salary fixed by the secretary, which salary shall not exceed the amount approved for such position by the legislature while in session. The duties and functions of the deputy secretary shall be determined and assigned by the secretary.

If appointed, he shall serve as acting secretary in the absence of the secretary.

C. There shall be an undersecretary of veterans affairs who shall be appointed by the governor with consent of the senate and who shall serve at the pleasure of the governor at a salary fixed by the governor, which salary shall not exceed the amount approved for such position by the legislature while in session. The undersecretary shall direct and be responsible for the functions of the office of management and finance within veterans affairs. In such capacity, he shall be responsible for accounting and budget control, procurement and contract management, data processing, management and program analysis, personnel management, and grants management for the department and all of its offices, including all agencies transferred to veterans affairs.

D. The domicile of the Department of Veterans Affairs shall be Baton Rouge, where suitable offices will be provided under R.S. 29:252.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:781,783-786.

HISTORICAL NOTE: Promulgated by the Department of Veterans Affairs, Veterans Affairs Commission, LR 38:

§902. Powers and Duties of the Secretary

A. In addition to the functions, powers, and duties otherwise vested in the secretary by law, he shall:

1. Represent the public interest in the administration of this chapter and shall be responsible to the governor, legislature, and the public therefor.

2. Determine the policies of the department, except as otherwise provided by law.

3. Organize, plan, supervise, direct, administer, execute, and be responsible for the functions and programs vested in the department, in the manner and to the extent provided by law, including but not limited to:

- a. veterans home operations;
- b. veterans benefits assistance;
- c. homeless veteran outreach;
- d. state veterans cemetery operations;
- e. Louisiana honor medal distribution;
- f. educational support, including State Approving

Agency operations;

- g. Troops to Teachers operations;
- h. Military Family Assistance administration;
- i. veteran owned business support, including but not limited to Veterans Initiative support;
- j. veteran employment support;
- k. incarcerated veteran support and readjustment support when appropriate;

l. other functions deemed necessary by the secretary and not prohibited by law.

4. Advise the governor on problems concerning the administration of the department and veterans issues.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:781,783-786.

HISTORICAL NOTE: Promulgated by the Department of Veterans Affairs, Veterans Affairs Commission, LR 38:

Subchapter A. Veterans Affairs Commission

§903. Officers

A. The Veterans Affairs Commission shall be composed of nine members who are honorably discharged veterans, citizens of the United States of America and of this state, and who are qualified voters.

B. The chairman and vice chairman of the commission shall be elected at the first meeting following the governor's appointment of the total commission or at the first meeting held following July 1 in even-numbered years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:253, R.S. 36:781.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Department of Veterans Affairs, LR 7:486 (October 1981), amended by the Department of Veterans Affairs, Veterans Affairs Commission, LR 38:

§905. Members

A. Each member may be paid \$75 each day devoted to the work of the commission, but not more than \$1,500 in any one fiscal year.

B. Commission members may also be entitled to reimbursement for necessary travel and other expenses, in accordance with current state travel regulations.

C. Monies under this section may only be paid when available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:253, R.S. 36:781.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Department of Veterans Affairs, LR 7:486 (October 1981), amended LR 20:48 (January 1994), amended LR 25:2211 (November 1999), amended by the Department of Veterans Affairs, Veterans Affairs Commission, LR 38:

§907. Meetings

A. The commission shall hold its regular meeting in the administrative office in Baton Rouge, unless, at the discretion of the chairman, it is necessary or convenient in the performance of its duties, to meet in some other city or location.

B. The commission may hold at least one regular meeting in each quarter, annual period, at the administrative office in Baton Rouge.

C. The commission can hold special meetings at times and places specified by call of the chairman, or a majority of the commission, upon written notice of time and place by the secretary.

D. A majority of commission members (five) constitutes a quorum for the transaction of business.

E. No action will be taken by the commission without the concurrence of at least five members physically present and voting.

F. No commission member shall vote by proxy, by representation, or by mail.

G. The secretary of veterans affairs shall act as secretary and keep adequate records and minutes of official actions and distribute copies to each member as soon as practical.

H. The commission shall meet semi-annually with the secretary and his staff for the purpose of reviewing the overall operation and upgrading of the department.

I. The commission, as a body, may meet at least once per year with the Joint Legislative Committee on Veterans Affairs to assist the committee in forming legislative goals for the Department of Veterans Affairs.

J. The meeting with the Joint Legislative Committee on Veterans Affairs shall be arranged at the call of the secretary.

K. No meeting of the commission shall exceed a maximum of two days.

L. Two-day meetings or weekend meetings of the commission are not to be scheduled unless there is valid justification and/or unusual circumstances.

M. Minutes of the commission meetings are to be submitted to the Legislative Committee on Veterans Affairs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:253, R.S. 36:781.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Department of Veterans Affairs, LR 7:486 (October 1981), amended by the Department of Veterans Affairs, Veterans Affairs Commission, LR 38:

§909. Policies of the Department

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:254.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Department of Veterans Affairs, LR 7:486 (October 1981), repealed by the Department of Veterans Affairs, Veterans Affairs Commission, LR 38:

§911. Travel

A. Travel will only be authorized on days that per diem is paid, unless prior approval is granted by the secretary or his designated representative. Travel must be for official state business.

B. All travel vouchers for the commission members shall be authorized by the secretary in accordance with adopted rules relating to travel.

C. The secretary shall keep the chairman and all members of the commission apprised of the availability or no availability of travel monies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:254.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Department of Veterans Affairs, LR 7:486 (October 1981), amended LR 20:48 (January 1994), amended LR 24:936 (May 1998), amended LR 25:2211 (November 1999), amended by the Department of Veterans Affairs, Veterans Affairs Commission, LR 38:

Subchapter B. State Educational Aid Program

§917. Eligibility

A. Application must be made through the Parish Veterans Service Office. In order to be eligible, the following criteria must be met.

1. A member of the armed forces of the United States of America must have been killed in action or died in active service from other causes or who is missing in action or who is a prisoner of war or veteran who died as a result of a service-connected disability.

2. The veteran must be rated 90 percent or above service-connected disabled or who has been determined to be unemployable as a result of a service-connected disability by evaluation of the United States Department of Veterans Affairs Rating Schedule.

3. The deceased veteran must have been a Louisiana resident for at least one year immediately preceding his entry into service.

4. The qualified veteran must have been a resident of Louisiana for at least two years immediately preceding admission of the child into a training institution.

5. The child applicant must be between the age of 16 and 25, and marriage is not a bar to the program.

6. The spouse has no age limit but must use the benefit within 10 years of the date eligibility is established. Remarriage is a bar to this benefit. Divorce after remarriage does not re-establish eligibility. Program termination for remarried surviving spouse will be the end of the semester in which the marriage takes place.

7. The eligible student must attend school on a full-time basis.

8. The eligible student may attend any state college or university, including institutions under the jurisdiction of the Board of Supervisors of Community and Technical Colleges; all entrance requirements for such institution must be met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:288, R.S. 29:254.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Department of Veterans Affairs, LR 7:485 (October 1981), amended LR 13:743 (December 1987), LR 19:1565 (December 1993), LR 23:1685 (December 1997), LR 26:2211 (November 1999), amended by the Department of Veterans Affairs, Veterans Affairs Commission, LR 38:

Subchapter C. Veterans Homes

§937. Admission Requirements

A. For admission to a Louisiana State Veterans Home, a veteran must be a resident of Louisiana. State residence is not mandatory if applicant is referred from an in-state United States Department of Veterans Affairs Medical Center, or by a Louisiana Department of Veterans Affairs veterans assistance counselor. The veteran must be recommended by the home administrator and approved for admission by the secretary of the Louisiana Department of Veterans Affairs.

B. The veteran must have served on active military duty 90 days or more, or if less than 90 days, discharged due to a disability incurred in the line of duty and must be in receipt of a discharge under honorable conditions for his/her latest period of active military service.

C. The veteran must undergo a medical examination prior to admission and, as a result, it must be confirmed that he/she does not have a communicable disease, does not require medical or hospital care for which the home is not equipped to provide, and does not have violent traits which may prove dangerous to the physical well-being of the other patients or employees.

D. The veteran must consent to abide by all rules and regulations governing the home and to follow the course of treatment as prescribed by the home's medical staff.

E. The veteran, or party responsible for his/her financial matters, must agree to pay the full patient care and maintenance fee. The administrator, with authorization from the secretary, may defer any charge that exceeds the veteran's income.

F. The veteran applicant must not have criminal charges pending against him/her.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:254.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Department of Veterans Affairs, LR 9:411 (June 1983), repromulgated LR 9:549 (August 1983), amended LR 11:34 (January 1985), LR 13:86 (February 1987), LR 13:161 (March 1987), LR 13:570 (October 1987), LR 18:269 (March 1992), LR 21:801 (August 1995), amended by the Department of Veterans Affairs, Veterans Affairs Commission, LR 38:

§939. Care and Maintenance Fees

A. Care and maintenance fees will be based on total family income. This includes income from all sources (Social Security, United States Department of Veterans Affairs pension/compensation, private pension, interest from savings, and/or interest bearing accounts/investments).

B. In no case will the fee charged to the patient be more than the actual cost of care, as determined by the secretary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:384, R.S. 29:254.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Veterans Affairs, LR 9:411 (June 1983), repromulgated LR 9:549 (August 1983), amended LR 11:34 (January 1985), LR 13:86 (February 1987), LR 13:161 (March 1987), LR 21:801 (August 1995), amended by the Department of Veterans Affairs, Veterans Affairs Commission, LR 38:

§947. Fee Payable in Advance after Admission

A. Care and maintenance fees are payable one month in advance. These fees are due before the tenth of each month. A portion of a month will be prorated according to the number of days stay. Patients will not be charged care and maintenance fees for periods of hospital confinement in excess of ten days unless they desire that a bed be held until they return. For periods of leave from the home, care and maintenance fees are payable as arranged with the home administrator or his designee. Patients who are unable to pay charges in advance will be allowed to prorate the advance month fee over a 12-month period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:254, R.S. 29:384.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Veterans Affairs, LR 9:411 (June 1983), repromulgated LR 9:549 (August 1983), amended LR 11:34 (January 1985), LR 13:86 (February 1987), LR 13:161 (March 1987), LR 21:802 (August 1995), amended by the Department of Veterans Affairs, Veterans Affairs Commission, LR 38:

§955. Unusual Financial Circumstances

A. All patients at a veterans home who feel they have unusual financial circumstances/hardships can request relief and consideration of deferment of care and maintenance fees. Under no circumstances will the deferment exceed 25 percent of the established care and maintenance fee, which is based on total family income. Patients may apply for this consideration through the home administrator. The home administrator will forward the request, with an appropriate recommendation, to the secretary for approval or disapproval.

B. All deferments that are in force will be re-evaluated annually on anniversary month. The home administrator will make a report of re-evaluation, with recommendations on each case, to the secretary for further consideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:254.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Veterans Affairs, LR 9:411 (June 1983), repromulgated LR 9:549 (August 1983), amended LR 11:34 (January 1985), LR 13:86 (February 1987), LR 13:161 (March 1987), LR 21:802 (August 1995), amended by the Department of Veterans Affairs, Veterans Affairs Commission, LR 38:

§957. Housing Policy

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:254.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Veterans Affairs, LR 21:945 (September 1995), repealed by the Department of Veterans Affairs, Veterans Affairs Commission, LR 38:

Family Impact Statement

The proposed Rule changes have no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

Public Comments

Interested persons are invited to submit written comments by 4:30 p.m., February 28, 2012, to Lane Carson, Secretary; Department of Veterans Affairs; P.O. Box 94095, Capitol Station; Baton Rouge, LA 70804-9095.

David LaCerte
Deputy Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Veterans Affairs

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is estimated that implementation of the proposed Rule will cost the agency \$650 in FY 12, for printing costs in the *Louisiana Register*. The proposed Rule change establishes new Rules to codify and comply with R.S. 36:781-787, which creates the Department of Veterans Affairs and establishes the offices of the Secretary, Deputy Secretary, and Undersecretary of Management and Finance (these positions are appropriated a total of \$438,408 in FY 12). The Department of Veterans Affairs was established as a cabinet department in 2003. The proposed Rule change also amends and/or repeals current Rules pertaining to the Veterans Affairs Commission, the State Aid Program, and Veterans Homes, as approved by the Veterans Affairs Commission on November 10, 2011. There are no estimated implementation costs to state or local governmental units resulting from the proposed Rule change.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed Rule change will have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups resulting from the proposed Rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed Rule change will have no effect on competition and employment.

David LaCerte
Deputy Secretary
1112#053

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Louisiana Workforce Commission Office of Workers' Compensation

Utilization Review Procedures (LAC 40:I:Chapter 27)

Editor's Note: Section 2718 of this Notice of Intent, which was originally published in the December 20, 2011 issue of the *Louisiana Register*, is being repromulgated, as page 2 of LWC Form 1010 was inadvertently omitted from the original publication.

Notice is hereby given, in accordance with R.S. 49:950 et seq., that the Louisiana Workforce Commission, Office of Workers' Compensation, pursuant to the authority vested in the Director of the Office of Workers' Compensation by R.S. 23:1310.1 and in accordance with applicable provisions of the Administrative Provisions Act, proposes to amend LAC 40:I:Chapter 27.

The proposed amendment will establish the process and procedures by which utilization review is conducted in light of the recently enacted R.S. 23:1203.1, which mandates the use of a medical treatment schedule.

Title 40

LABOR AND EMPLOYMENT

Part I. Workers' Compensation Administration

Subpart 2. Medical Guidelines

Chapter 27. Utilization Review Procedures

§2718. Utilization Review Forms

1. LWC Form 1010—Request of Authorization/Carrier or Self Insured Employer Response

LWC FORM 1010 - REQUEST OF AUTHORIZATION/CARRIER OR SELF INSURED EMPLOYER RESPONSE

PLEASE PRINT OR TYPE

SECTION 1. IDENTIFYING INFORMATION - To Be Filled Out By Health Care Provider			
Last Name:	First:	Middle:	Street Address, City, State, Zip:
Social Security Number:	Date of Birth:	Phone Number:	Date of Injury:
Employers Name:	Street Address, City, State, Zip:		Phone Number:
Name:	Adjuster:	Claim Number (if known):	
Street Address, City, State Zip:	Email Address:	Phone Number:	Fax Number:
SECTION 2. REQUEST FOR AUTHORIZATION - To Be Filled Out By Health Care Provider			
Requesting Health Care Provider		Phone Number:	Fax Number:
Street Address, City, State Zip:		Email:	
Diagnosis:	CPT/DRG Code:	ICD-9/DMS-4 Code:	
Requested Treatment or Testing (Attach Supplement If Needed):			
Reason for Treatment or Testing (Attach Supplement If Needed):			
INFORMATION REQUIRED BY RULE TO BE INCLUDED WITH REQUEST FOR AUTHORIZATION - To Be Filled Out By Health Care Provider (Following is the required minimum information for Request of Authorization (LAC 40:2715 (C))			
<input type="checkbox"/> History provided to the level of condition and as provided by Medical Treatment Schedule <input type="checkbox"/> Physical Findings/Clinical Tests <input type="checkbox"/> Documented functional improvements from prior treatment <input type="checkbox"/> Test/imaging results <input type="checkbox"/> Treatment Plan including services being requested along with the frequency and duration			
I hereby certify that this completed form and above required information was <input type="checkbox"/> Faxed to the Carrier/Self Insured Employer on this the _____ day of _____, _____ (year)			
<input checked="" type="checkbox"/> Emailed _____ (day) _____ (month) _____ (year)			
Signature of Health Care Provider:			Printed Name:
SECTION 3. RESPONSE OF CARRIER/SELF INSURED EMPLOYER FOR AUTHORIZATION (Check appropriate box below and return to requesting Health Care Provider, Claimant and Claimant Attorney as provided by rule)			
<input type="checkbox"/> The requested Treatment or Testing is approved			
<input type="checkbox"/> The requested Treatment or Testing is approved with modifications (Attach summary of reasons and explanation of any modifications)			
<input type="checkbox"/> The requested Treatment or Testing is denied because			
<input type="checkbox"/> Not in accordance with Medical Treatment Schedule or R.S.23:1203.1(D) (Attach summary of reasons)			
<input type="checkbox"/> The request, or a portion thereof, is not related to the on-the-job injury			
<input type="checkbox"/> The claim is being denied as non-compensable			
<input type="checkbox"/> Other (Attach brief explanation)			
I hereby certify that this response of Carrier/Self Insured Employer for Authorization was <input type="checkbox"/> Faxed to the Health Care Provider (and to the Attorney of Claimant if one exists, if denied or approved with modification) on this the _____ day of _____, _____ (year)			
<input checked="" type="checkbox"/> Emailed _____ (day) _____ (month) _____ (year)			
Signature of Carrier/Self Insured Employer:			Printed Name:
<input type="checkbox"/> The prior denied or approved with modification request is now approved			
I hereby certify that this response of Carrier/Self Insured Employer for Authorization was <input type="checkbox"/> Faxed to the Health Care Provider and Attorney of Claimant if one exists on this the _____ day of _____, _____ (year)			
<input checked="" type="checkbox"/> Emailed _____ (day) _____ (month) _____ (year)			

Signature of Carrier/Self Insured Employer:	Printed Name:
SECTION 4. FIRST REQUEST	
(Form 1010A is required to be filled out by Carrier/Self Insured Employer and Health Care Provider)	
<input type="checkbox"/> The requested Treatment or Testing is delayed because minimum information required by rule was not provided	
I hereby certify that this First Request and accompanying Form 1010A was	
<input type="checkbox"/> Faxed	to the Health Care Provider on this the _____ day of _____, _____
<input type="checkbox"/> Emailed	(day) (month) (year)
Signature of Carrier/Self Insured Employer:	Printed Name:
I hereby certify that a response to the First Request and accompanying Form 1010A was	
<input type="checkbox"/> Faxed	to the Carrier/Self Insured Employer on this the _____ day of _____, _____
<input type="checkbox"/> Emailed	(day) (month) (year)
Signature of Health Care Provider:	Printed Name:
SECTION 5. SUSPENSION OF PRIOR AUTHORIZATION DUE TO LACK OF INFORMATION	
Suspension of Prior Authorization Process due to Lack of Information	
<input type="checkbox"/> The requested Treatment or Testing is delayed due to a Suspension of Prior Authorization Due to Lack of Information	
I hereby certify that this Suspension of Prior Authorization was	
<input type="checkbox"/> Faxed	to the Health Care Provider on this the _____ day of _____, _____
<input type="checkbox"/> Emailed	(day) (month) (year)
Signature of Carrier/Self Insured Employer:	Printed Name:
Appeal of Suspension to Medical Services Section by Health Care Provider	
I hereby certify that this form and all information previously submitted to Carrier/Self Insured Employer was faxed to OWCA Medical Services (Fax Number: 225-XXX-XXXX) this _____ day of _____, _____.	
I hereby certify that this Appeal of Suspension of Prior Authorization was	
<input type="checkbox"/> Faxed	to the Carrier/Self Insured Employer on this the _____ day of _____, _____
<input type="checkbox"/> Emailed	(day) (month) (year)
Signature of Health Care Provider:	Printed Name:
SECTION 6. DETERMINATION OF MEDICAL SERVICES SECTION	
<input type="checkbox"/> The required information of LAC40:2715(C) was not provided	
<input type="checkbox"/> The required information of LAC40:2715(C) was provided	
I hereby certify that a written determination was	
<input type="checkbox"/> Faxed	to the Health Care Provider & Carrier/Self Insured Employer on this the _____ day of _____, _____
<input type="checkbox"/> Emailed	(day) (month) (year)
Signature:	Printed Name:
SECTION 7. HEALTH CARE PROVIDER RESPONSE TO MEDICAL SERVICES DETERMINATION	
I hereby certify that additional information, pursuant to the determination of Medical Services Section, was	
<input type="checkbox"/> Faxed	to the Carrier/Self Insured Employer on this the _____ day of _____, _____
<input type="checkbox"/> Emailed	(day) (month) (year)
Signature of Health Care Provider:	Printed Name:

B. LWC Form 1010A—First Request

LWC FORM 1010A - FIRST REQUEST
PLEASE PRINT OR TYPE

SECTION 1. IDENTIFYING INFORMATION			
P A T I E N T	Last Name:	First:	Middle:
Employers Name:			Claim Number (if known):
SECTION 2. CARRIER/SELF INSURED EMPLOYER'S FIRST REQUEST FOR REQUIRED MINIMUM INFORMATION			
C A R R I E R	I have received a request for authorization for the above referenced matter and have determined it lacks the required minimum information of 40:2715(C) - Please check all that apply		
	<input type="checkbox"/> History provided to the level of condition and as provided by Medical Treatment Schedule		
	<input type="checkbox"/> Physical Findings/Clinical Tests		
	<input type="checkbox"/> Documented functional improvements from prior treatment		
	<input type="checkbox"/> Test/imaging results		
	<input type="checkbox"/> Treatment Plan including services being requested along with the frequency and duration		
	COMMENTS		
	(Please provide a detailed explanation in support of your First Request)		
SECTION 3. HEALTH CARE PROVIDER RESPONSE TO FIRST REQUEST			
P R O V I D E R	<input type="checkbox"/> Additional information has been provided - Attach Supporting Documentation		
	<input type="checkbox"/> Additional information has not been provided - Provide explanation below		
	EXPLANATION		

AUTHORITY NOTE: Promulgated in accordance with RS 23:1291.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 38:

Family Impact Statement

1. The effect on the stability of the family.

The proposed UR Rules for the Office of Workers' Compensation Administration will have no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children.

The proposed UR Rules for the Office of Workers' Compensation Administration will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family.

The proposed UR Rules for the Office of Workers' Compensation Administration will have no effect on the functioning of the family.

4. The effect on earnings and family budget.

The proposed UR Rules for the Office of Workers' Compensation Administration will have no effect on family earnings and family budget.

5. The effect on the behavior and personal responsibility of children.

The proposed UR Rules for the Office of Workers' Compensation Administration will have no effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government able to perform the function as contained in the proposed Rule.

The family or a local government is not able to perform the functions contained in the proposed UR Rules for the Office of Workers' Compensation Administration.

Public Comments

Inquiries concerning the proposed amendment may be directed to: Director, Office of Workers' Compensation Administration, Louisiana Workforce Commission, P.O. Box 94040, Baton Rouge, Louisiana 70804-9040.

Interested parties may submit data, views, arguments, information or comments on the proposed amendment in writing to the Louisiana Workforce Commission, Office of Workers' Compensation, P.O. Box 94040, Baton Rouge, Louisiana 70804-9040., Attention: Director, Office of Workers' Compensation Administration. Written comments must be submitted and received by the department within 20 days from the publication of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument or public hearing must be made in writing and received by the Department within 20 days of the publication of this notice.

Curt Eysink
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Utilization Review Procedures

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule addresses Utilization Review (UR), which is the process used by employers or claim administrators to review treatment and determine whether or not to approve the treatment based on medical necessity. These rules are in

conjunction with the Medical Treatment Schedule (MTS) that became effective on July 15, 2011. There are no significant additional administrative costs associated with the amendment of these rules. The Medical Director has been under contract since December 1, 2010, but \$10,000 in additional expenses may be required to contract additional physician(s) to substitute for the Medical Director as needed for timeliness or specialization. All costs that may be necessary for the administration of the proposed rules have been factored into the existing budget.

The amendment of the existing UR rules establishes the process and procedures to be followed by the parties in light of the implementation of the (MTS). The Office of Workers' Compensation (OWC)'s administrative involvement in setting independent medical exams (IME) and second medical opinions (SMO) should decline in light of the new procedures set by MTS and new UR rules. However, these administrative tasks will be replaced by other administrative tasks established by the MTS and new UR rules. As such, the promulgation of these rules is not expected to provide any additional costs or savings for the OWC. The proposed rules do contain additional forms but the forms will be made available online. Thus, OWC will not experience any additional expense with regards to the forms.

The Division of Administration indicates that the proposed rule will have no fiscal impact on the Office of Risk Management.

- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The implementation of the UR rule change will have no anticipated effect on revenue collections of state or local governmental units.

- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rules impose rigid deadlines and reporting requirements for certain components of care. According to LWC, all parties affected by the new UR rules could receive a net economic benefit. For injured workers, the new UR process will help streamline the delivery of medical services. For medical providers, the rules will remove unreasonable delays in providing treatment. For employers/insurance carriers, the rules will ensure recognized, evidence based treatment for injured workers that is medically necessary which could enable a faster return to work. For all affected parties, the rules will establish a process whereby medical disputes are resolved by a streamlined administrative process rather than the prior legal process. In accordance with the rules, most medical disputes will be resolved in less than 60 days. By contrast, before implementation of the MTS, medical disputes had taken an average of 15 months to resolve in court. The reduction in time for resolving medical disputes should result in savings in litigation and indemnity expenses. However, the anticipated savings cannot be quantified with any degree of certainty at this time. The proposed rules do contain new forms to be made available online. The reporting burden is not anticipated to be significantly different than that currently imposed.

- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated direct effect on competition and employment.

Wes Hataway
Director
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Chief Economist
Legislative Fiscal Office

Administrative Code Update

CUMULATIVE: JANUARY-DECEMBER 2011

LAC Title	Part.Section	Effect	Location LR 37 Month Page	LAC Title	Part.Section	Effect	Location LR 37 Month Page
4	III.901	Adopted	May 1404	22	XIII.103,301,503	Amended	June 1605
	VII.961,963,965,967,969,971,973,975,977	Adopted	June 1606		XV.Chapter 11	Adopted	Jan. 321
	VII.979,981,983,985,987	Adopted	June 1606		XV.Chapter 13 and 15	Adopted	Sept. 2599
	VII.1301,1303,1305	Amended	Jan. 319	28	I.309	Amended	Mar. 886
7	I.103	Amended	Mar. 809		I.325	Amended	Nov. 3275
	V.1901	Amended	Jan. 270		I.501,503,701,703,705,709,713,719	Amended	July 2139
	V.1903,1921,1923,1931,1933,1935	Adopted	Jan. 270		I.1107	Amended	Apr. 1142
	V.1905,1907,1909,1911,1913	Repealed	Jan. 270		I.1107	Amended	Nov. 3219
	VII.Chapter 3	Repealed	Feb. 494		I.1303	Amended	Nov. 3220
	XI.101	Amended	Mar. 809		IV.301	Amended	June 1561
	XIII.101,121	Amended	Jan. 270		IV.301	Amended	June 1562
	XIII.113	Amended	May 1373		IV.505	Amended	Feb. 588
	XIII.121,125,131,143	Amended	Oct. 2979		IV.703	Amended	Oct. 2987
	XIII.171,183,193	Adopted	Oct. 2979		IV.1205	Amended	May 1388
	XV.303,319,321	Amended	Sept. 2583		IV.1401	Amended	May 1386
	XXIII.101,301,303,305,501,503,505,509,701	Repromulgated	Dec. 3465		IV.2001,2003,2005,2007,2009,2011,2013	Adopted	May 1387
	XXIII.103,507,709,711,713,715,723,725,729	Amended	Dec. 3465		V.107,109	Amended	Oct. 2986
	XXIII.143	Amended	Jan. 269		V.221	Amended	Sept. 2598
	XXIII.143	Amended	Mar. 809		VII.107,109	Amended	Oct. 2988
	XXIII.307,1303,3301	Adopted	Dec. 3465		XXXI.507	Amended	July 2136
	XXIII.727,901,1109,2105,2901,2905,2909	Repromulgated	Dec. 3465		XLI.301,701,901,903,1101,1105,1301	Amended	May 1382
	XXIII.1101,1103,1105,1107,1111,1113,1301	Amended	Dec. 3465		XLI.509	Repealed	May 1382
	XXIII.1501,1701,1901,1903,2101,2103,2301	Amended	Dec. 3465		XLV.301,303,305,307,309,701,901,903,	Amended	Feb. 560
	XXIII.2501,2701,2903,2907,3101,3103,3105	Amended	Dec. 3465		XLV.501,503,505,507,509	Adopted	Feb. 560
	XXIII.3107,3303,3305,3309,3501	Amended	Dec. 3465		XLV.905,907,909,911,913,915,917,919	Amended	Feb. 560
	XXIII.3307,3311	Repromulgated	Dec. 3465		XLV.921,1101,1301	Amended	Feb. 560
	XXV.101,103,105,107,109,111,113,115	Amended	Jan. 272		XLV.351,503,505,513,737,2503,2519,2521	Amended	Feb. 566
	XXV.117,119,121,123,125,127,129,131	Amended	Jan. 272		XLIX.507,509,511,515,517,2502	Adopted	Feb. 566
	XXV.133,135,137,139,141,143,145,147	Amended	Jan. 272		XLIX.513	Amended	Apr. 1141
	XXV.149,151,153,155,157,159,163	Amended	Jan. 272		XLIX.741,1503,1509,1511,1517	Amended	July 2137
	XXV.161,165,167,169,171,173	Repealed	Jan. 272		XLIX.3313,3403,3405,3407,3410,3415,3501	Amended	Feb. 566
	XXVII.101,103,105,107,109,111,113,115	Amended	Feb. 494		XLIX.3417,3419	Repealed	Feb. 566
	XXVII.117,119	Amended	Feb. 494		LIX.101,105,107,301,303,307,309,501,523	Amended	July 2094
	XXVII.123,125,127,128,129,131,133,135	Amended	Feb. 494		LIX.103,303,305	Repromulgated	July 2094
	XXVII.134	Adopted	Feb. 494		LIX.109	Repealed	July 2094
	XXVII.136,137,141,143,145,147,149,151	Amended	Feb. 494		LIX.503,505,507,509,511,513,515,517,519	Adopted	July 2094
	XXVII.153,155,191,193,195,197,199,201	Amended	Feb. 494	LIX.521	Adopted	July 2094	
XXVII.203,205,207,209,211,213,215,217	Amended	Feb. 494	LXXVII.101,103,105,301,303,317,319,329	Amended	Feb. 518		
XXIX.107,109,111,113	Amended	Dec. 3464	LXXVII.325,305,307,309,311,313,315,321	Adopted	Feb. 518		
XXXIX.301	Amended	Oct. 2985	LXXVII.323,327,333,335,337,339,343,345	Adopted	Feb. 518		
XXXIX.1501,1503	Amended	Oct. 2985	LXXVII.331,339,341,351,353,361,363,371	Amended	Feb. 518		
10	XII.Chapter 1	Repealed	Feb. 589	LXXVII.347,349,355,357,359,365,367,369	Adopted	Feb. 518	
	XIII.1701,1703,1705	Adopted	June 1611	LXXVII.373,375,377,387,505,507,509,511	Amended	Feb. 518	
	XIII.1701,1703,1705	Amended	July 2148	LXXVII.379,381,383,385,389,391,393,395	Adopted	Feb. 518	
	XIII.1901	Adopted	July 2149	LXXVII.397,501,503,515,701,901,903	Adopted	Feb. 518	
	13	I.501,539,541,543,545,547,549,551,553,555	Repealed	Aug. 2376	LXXVII.513	Amended	Feb. 518
		I.503,505,507,509,511,513,515,517,519	Amended	Aug. 2376	LXXIX.107	Amended	July 2145
		I.521,523,525,527,529,531,533,535,537	Amended	Aug. 2376	LXXIX.2109	Repromulgated	Aug. 2390
		I.557,559,561,563,565	Repealed	Aug. 2376	LXXIX.2109,2305,2309,2325,2337	Amended	July 2142
		I.701,703,707,709,711,713,715,717,721,723	Amended	Aug. 2368	LXXIX.2109,2331,2335	Amended	July 2144
		I.705	Amended	Aug. 2368	LXXIX.2109,2331,2335	Adopted	Sept. 2597
I.729,731,732,739		Repealed	Aug. 2368	LXXIX.2324	Adopted	July 2143	
I.725,727,733,735,737,743,745,749		Adopted	Aug. 2368	LXXIX.2523	Amended	Nov. 3204	
I.1101,1103,1105,1107,1109,1111,1115,1117		Amended	Aug. 2368	LXXXIII.302	Amended	Mar. 857	
I.1119,1121,1123,1125,1127,1129,1131		Amended	Sept. 2587	LXXXIII.302,409,515,703,3501,4301,4313	Amended	July 2118	
I.1701,1703,1705,1707,1709,1711,1713,1715		Amended	Sept. 2587	LXXXIII.409	Amended	Aug. 2382	
I.1717,1719,1721,1725		Amended	Dec. 3497	LXXXIII.409,613,3301,3303,3501,4313	Amended	Nov. 3200	
I.1901,1903,1905,1907,1909,1911,1913,1915		Amended	Dec. 3497	LXXXIII.708,709	Amended	Apr. 1122	
I.1917,1919,1921,1923,1925		Amended	Dec. 3501	LXXXIII.1101,1102,1103	Adopted	July 2120	
I.Chapters 21, 23, and 25		Amended	Dec. 3501	LXXXIII.1601	Amended	July 2120	
I.3301,3303,3305,3307		Repealed	Dec. 3501	LXXXIII.2401	Amended	Sept. 2595	
I.3503,3513		Amended	Dec. 3494	LXXXIII.2403	Adopted	Sept. 2595	
22		I.305	Amended	Feb. 514	LXXXIII.4503,4509	Amended	July 2118
	I.315	Amended	Feb. 514	LXXXIII.4302	Repealed	July 2118	
	I.316	Amended	July 2177	LXXXIII.4311	Adopted	July 2118	
	I.323	Amended	July 2184	XCI.101,103,107,109,111,301,303,305,307	Amended	Nov. 3215	
	I.340	Amended	Apr. 1174	XCI.309,311,313,315	Amended	Nov. 3215	
	I.403	Amended	Apr. 1176	XCI.317,501,503,505,507,509	Repealed	Nov. 3215	
	I.1301	Amended	May 1408	XCVII.105,117,505	Amended	Mar. 885	
	I.1303	Adopted	May 1408	CXI.305,315,701,1813,1817,1823,1829,3307	Amended	Mar. 858	
	I.1305,1307,1309,1311,1313,1315,1317	Repealed	May 1408	CXI.305,1813,1817	Repromulgated	Apr. 1123	
	I.1319,1321,	Repealed	May 1408	CXI.3501	Amended	Mar. 858	
	III.4703	Amended	June 1606	CXI.1700,1810,1831,1900,2000,3511	Adopted	Mar. 858	
	III.4705,4709	Amended	Jan. 319	CXIII.303,307,501,503,701,903,905,911	Amended	July 2122	
	III.4750	Adopted	June 1606	CXIII.907,2509	Amended	Nov. 3203	
				CXIII.1303,1305,1307,1501,1903,2101,2103	Amended	July 2122	
				CXIII.2107,2303,2305,2503,2515,2701,2901	Amended	July 2122	
				CXIII.2505	Repromulgated	July 2122	

LAC Title	Part.Section	Effect	Location LR 37 Month Page	LAC Title	Part.Section	Effect	Location LR 37 Month Page
28	CXIII.2903,3101	Amended	July 2122	33	III.111,211,223,501,503,523,537,2132	Amended	Apr. 1144
	CXV.303	Amended	Apr. 1136		III.111,311,501,605,918,919,1513,2115,2139	Amended	Nov. 3220
	CXV.337	Amended	Apr. 1141		III.2141,2153,5107	Amended	Nov. 3220
	CXV.337	Amended	May 1380		III.501	Amended	Nov. 3233
	CXV.337	Amended	July 2134		III.501	Repromulgated	Dec. 3508
	CXV.344	Adopted	Nov. 3205		III.501,502	Amended	May 1391
	CXV.502	Amended	Apr. 1138		III.501,502,509	Amended	Apr. 1147
	CXV.515	Amended	Apr. 1140		III.504,509	Amended	June 1568
	CXV.521	Adopted	Apr. 1138		III.506,507,2160,3003,5116,5122,5311,5901	Amended	Oct. 2989
	CXV.1103	Amended	July 2132		III.509	Repromulgated	May 1389
	CXV.1103,1105	Amended	Apr. 1126		III.509	Repromulgated	July 2145
	CXV.1109	Amended	Apr. 1125		III.1101,1107,1111	Amended	Apr. 1143
	CXV.1118	Amended	Mar. 879		III.1106	Adopted	Apr. 1143
	CXV.1121	Amended	July 2134		III.2123	Amended	Apr. 1150
	CXV.1141	Amended	Apr. 1134		V.509,513,515,517,519,709,711,713,715,717	Amended	Nov. 3233
	CXV.1149	Adopted	Apr. 1139		V.520,521,522,523	Repealed	Nov. 3233
	CXV.1301	Amended	Apr. 1132		V.525,527,529,1301,1307,3003,10313	Adopted	Nov. 3233
	CXV.1301	Amended	Apr. 1133		V.719,721,723,725,1303,1305,1399,1501	Amended	Nov. 3233
	CXV.1302	Adopted	Apr. 1133		V.10303	Amended	Nov. 3233
	CXV.1302	Adopted	May 1380		V.10303	Amended	June 1613
	CXV.1501	Amended	Apr. 1128		V.10305	Amended	July 2187
	CXV.1703	Amended	Apr. 1141		VII.115,513,521,711,713,715,717,721,723	Amended	June 1563
	CXV.2302	Adopted	Aug. 2390		VII.115,117,303,305,315,407,501,503,507	Amended	Nov. 3233
	CXV.2313,2347	Amended	Apr. 1134		VII.315,407,503,509,513,515,525,713,715	Repromulgated	Dec. 3509
	CXV.2317	Amended	Apr. 1137		VII.719	Repromulgated	Dec. 3509
	CXV.2318,2319	Amended	Feb. 547		VII.725	Amended	June 1563
	CXV.2318,2319	Amended	July 2129		IX.2315	Amended	Feb. 588
	CXV.2318,2319,2363	Amended	Apr. 1128		IX.7301,7303,7305,7307	Amended	Oct. 2992
	CXV.2318,2319,2325,2326	Amended	Nov. 3193				
	CXV.2318,2333,2337,2355,2369	Amended	July 2132	34	III.131	Amended	Nov. 3260
	CXV.2321	Amended	July 2128				
	CXV.2321	Amended	Nov. 3199	35	I.1304	Amended	May 1393
	CXV.2354	Adopted	July 2132		I.1727,1743	Amended	May 1393
	CXV.2367	Amended	July 2134				
	CXV.2379	Amended	Mar. 880	37	XI.501,503,505,507,509,511,513,515,517	Adopted	July 2168
	CXV.2903	Amended	July 2128		XI.519,521,523,525,527,529	Adopted	July 2168
	CXV.2907	Amended	July 2131		XI.701,703,705,707,709,711,713,715,717	Adopted	July 2172
	CXV.3309,3311	Amended	Apr. 1137		XI.719,721,723,725,727,729,731	Adopted	July 2172
	CXV.3319	Adopted	Apr. 1135		XIII.2111	Amended	Feb. 598
	CXXXI.233,235,237,241,243,625,627,629	Amended	Feb. 549				
	CXXXI.233,303,305,307,309,315,1003	Amended	Feb. 558		I.301,303,305,307,309,311,313,315,317,319	Adopted	Dec. 3542
	CXXXI.233,235,237,243,605,625	Amended	Nov. 3208	40	I.Chapters 20-23	Adopted	June 1631
	CXXXI.241	Repealed	Nov. 3208		I.5501,5507,5511,5515,5525,5533,5539	Amended	June 1625
	CXXXI.243	Repromulgated	Feb. 556		I.5529,5815,6003	Repealed	June 1625
	CXXXI.309	Amended	Mar. 882		I.5541,5701,5705,5709,5805,5809,5813	Amended	June 1625
	CXXXI.411	Amended	Mar. 883		I.5817,5819,5925,6001,6005,6103,6507	Amended	June 1625
	CXXXI.414	Adopted	Mar. 880		I.6104	Adopted	June 1625
	CXXXI.421	Amended	Mar. 884		I.6509,6605	Amended	June 1625
	CXXXI.421	Amended	July 2135	42	IX.101,103,105,107,109,301,303,305,309	Amended	July 2209
	CXXXI.601	Amended	May 1381		IX.311,313,315,317,501,503,505,507,509	Amended	July 2209
	CXXXI.605	Amended	Mar. 883		IX.511,513,515,517,519,521,523,525,527	Amended	July 2209
	CXXXI.605	Repromulgated	June 1561		IX.529,531,533,535	Amended	July 2209
	CXXXI.609	Amended	Mar. 881				
	CXXXI.625	Amended	May 1381	42	III.2737	Adopted	May 1415
	CXXXI.630	Amended	Feb. 549		XIII.1701	Amended	Aug. 2410
	CXXXI.631,633	Amended	Feb. 549		XV.141	Amended	Oct. 3063
	CXXXI.666	Adopted	July 2135				
	CXXXI.723	Amended	Mar. 882	43	VI.701	Amended	Aug. 2410
	CXXXI.787	Amended	July 2136		XV.105,2305,2307,3113,3115,3127,3129	Amended	Sept. 2729
	CXXXVII.101,301,303,305,307,309,311	Repromulgated	Mar. 861		XV.2304,2913,3114,3131,3133,3135,3137	Adopted	Sept. 2729
	CXXXVII.313	Repromulgated	Mar. 861		XV.3521,3523,5414,8509	Adopted	Sept. 2729
	CXXXIX.103,303,307,503,507,513,515	Amended	Mar. 867		XV.3517,5601	Amended	Sept. 2729
	CXXXIX.103,305,509,515,518,701,901	Amended	Aug. 2382		XIX.118	Amended	Oct. 3064
	CXXXIX.109,519	Repealed	Mar. 867		XIX.701,703,705,707	Amended	Nov. 3271
	CXXXIX.517	Amended	Mar. 867				
	CXXXIX.519	Adopted	Aug. 2382	46	I.1501,1505,1507,1509,1511,1513,1515	Amended	Aug. 2402
	CXXXIX.306,512,518,1801,3101	Adopted	Mar. 867		I.1517,1521,1523,1525,1531,1533	Amended	Aug. 2402
	CXXXIX.901,1101,1305,1501,1502,1503	Amended	Mar. 867		I.1535,1537	Adopted	Aug. 2402
	CXXXIX.1101	Repromulgated	Apr. 1124		III.1103,1105,1109,1111,1113,1117,1503	Amended	July 2147
	CXXXIX.1101,1303,1501,1503,1801,1903	Amended	Aug. 2382		III.1203,2701,2703,2705,2709,2711	Repealed	July 2147
	CXXXIX.1305	Repealed	Aug. 2382		III.1706	Adopted	July 2147
	CXXXIX.1701,1703,1903,1905,1907,2101	Amended	Mar. 867		V.107	Amended	Oct. 2995
	CXXXIX.2101	Amended	May 1376		V.107,1307,1501,1503,1505,1507,1509,1511	Repromulgated	Nov. 3261
	CXXXIX.2103,2105,2107,2301,2505,2701	Amended	Mar. 867		V.1513,1515,1801,1802,1803,1804,1805	Repromulgated	Nov. 3261
	CXXXIX.2701	Amended	Aug. 2382		V.1806	Repromulgated	Nov. 3261
	CXXXIX.2705,2711,2713,2905,2907	Amended	Mar. 867		V.Chapter 18	Repealed	Oct. 2995
	CXLV.Chapters 1 and 11	Adopted	Jan. 310		V.1307,1501,1503,1505,1507,1509,1511	Adopted	Oct. 2995
	CXLV.301,303,305,307,309,311,501,503	Adopted	Mar. 876		V.1513,1515	Adopted	Oct. 2995
	CXLV.505	Adopted	Mar. 876		V.2905,2907	Amended	May 1405
	CXLV.701,703,705	Adopted	Apr. 1125		V.2905,2907	Repromulgated	June 1612
	CXLV.901,903,905,1301,1303,1305,1307	Adopted	May 1377		XXI.101,317,501,511,609,901,1103,1301	Amended	Jan. 317
	CXLV.1501,1503,1507,1701,1703,1705	Adopted	May 1377		XXI.105	Adopted	Jan. 317
	CXLIX.101,301,501,701,901,1101,1301	Amended	July 2126		XXI.301,307,309	Amended	Dec. 3513
	CXLIX.1501,1701,1901	Amended	July 2126		XXV.111,301,303,305,307,309,311,313,317	Amended	Sept. 2615
					XXV.319,501,503,505,703,901,903,905,907	Amended	Sept. 2615
32	VII.101,301,305,317,709,721,723,1107	Amended	June 1617		XXV.919,925,945	Amended	Sept. 2615
	VII.323	Adopted	June 1617		XXVII.320,501	Amended	Dec. 3514

LAC Title	Part.Section	Effect	Location LR 37 Month Page	LAC Title	Part.Section	Effect	Location LR 37 Month Page
46	XXVII.502	Adopted	Dec. 3514	46	LXVII.10415	Repealed	Jan. 332
	XXXI.310	Adopted	Apr. 1150		LXVII.30101,30301,30303,30501,30701	Adopted	Aug. 2406
	XXXI.1107	Amended	Apr. 1150		LXVII.30703,30901,30903,30905,30907	Adopted	Aug. 2406
	XXXIII.124,306,403,409,415,1611,1709	Amended	Dec. 3515		LXIX.101,103,105,109,111,115,119,503	Amended	July 2152
	XXXIII.132	Adopted	Dec. 3515		LXIX.112,301,701	Adopted	July 2152
	XXXIII.301,415,419,1509,1611,1709,1711	Amended	July 2150		LXIX.703,901,1101,1301	Repealed	July 2152
	XXXIII.306,313,701,1511,1709,1711	Amended	May 1405		LXXV.103,107,109,113,115,117,119,121	Amended	Aug. 2392
	XXXIII.419,701,1509	Amended	Feb. 590		LXXV.109,131	Repromulgated	Sept. 2622
	XXXIII.712,714	Adopted	May 1405		LXXV.123,125,127,131,301,501,503,507	Amended	Aug. 2392
	XXXIII.720	Repealed	May 1405		LXXV.701	Amended	Aug. 2392
	XXXIII.1711	Amended	Dec. 3515		LXXXV.400,403,409,413,811,1227	Amended	Apr. 1152
	XL.115,121,325,501	Amended	Aug. 2404		LXXXV.705,1105	Amended	June 1571
	XLV.231,233,235,3901,3903,3905,3907	Adopted	Mar. 888		XCI.105	Amended	Mar. 899
	XLV.311,353	Amended	Jan. 337				
	XLV.3509	Amended	Feb. 596	48	I.201,203,205,207,209,211	Adopted	June 1603
	XLV.3509	Amended	Aug. 2401		I.4101,4103,4105,4107,4109,4111,4113	Repealed	Mar. 816
	XLV.3903	Repromulgated	Apr. 1150		I.4115,4117	Repealed	Mar. 816
	XLV.3909	Adopted	Mar. 888		I.Chapter 72	Adopted	Apr. 1154
	XLV.3911,3913,3915,3917,3919,3921,3923	Adopted	Mar. 888		I.9303	Amended	Oct. 3027
	XLV.3925,3927,3929,3931,3933,3935,3937	Adopted	Mar. 888		I.9707	Amended	Sept. 2630
	XLV.3939,3941,3943,3945,3947,3949,3951	Adopted	Mar. 888		I.12511	Amended	Nov. 3264
	XLV.3953,3955,3957,3959,3961,6101,6103	Adopted	Mar. 888		I.16101,16103,16105,16107,16109,16111	Amended	Sept. 2584
	XLV.6105,6107,6109,6111,6113,6115,6117	Adopted	Mar. 888		I.16113,16115,16117,16119	Amended	Sept. 2584
	XLV.6119,6121	Adopted	Mar. 888		I.16121	Repealed	Sept. 2584
	XLV.7203,7207,7215	Amended	Mar. 897		I.17105	Amended	Mar. 904
	XLV.7601,7603,7605	Adopted	Jan. 336				
	XLVII.3323,3329,3333,3339,3341,4507	Amended	Oct. 3025	50	I.1101	Amended	Jan. 341
	XLVII.3419	Amended	Oct. 3025		I.Chapters 31-40	Adopted	June 1573
	XLVII.3705	Amended	Mar. 898		I.2911	Amended	Jan. 338
	XLIX.103,105,301,303,305,501,503,505,507	Amended	Feb. 590		I.8101,8103,8105	Amended	Jan. 339
	XLIX.504,908,1201	Adopted	Feb. 590		II.10154	Amended	Jan. 341
	XLIX.509,701,703,709,711,713,903,905,907	Amended	Feb. 590		II.10156	Adopted	Jan. 341
	XLIX.713,1103	Repromulgated	Mar. 887		II.1305	Amended	Apr. 1174
	XLIX.909,1101,1103,1105,1107,1109,1111	Amended	Feb. 590		II.20005	Amended	Mar. 902
	XLIX.1603	Amended	Feb. 590		II.20005	Amended	Sept. 2630
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	LIV.107,111,113,115,117,119,141,172,177	Adopted	Oct. 3031		V.701,703	Adopted	July 2159
	LIV.133,135,137,139,143,145,147,149,151	Amended	Oct. 3031		V.909	Adopted	Feb. 597
	LIV.153,155,157,159,161,163,165,167,169	Amended	Oct. 3031		V.953,955,959,967	Amended	July 2159
	LIV.171,173,175,179,181,185,187,191,193	Amended	Oct. 3031		V.5107	Amended	June 1600
	LIV.183,189,309,311,313,315,317,353,355	Adopted	Oct. 3031		V.5111	Adopted	Oct. 3030
	LIV.194,195,197,198,199,301,303,305,307	Amended	Oct. 3031		V.5313,5317,5513,5517,5713,5719,6115	Amended	Nov. 3266
	LIV.321,323,325,329,330,331,333,335,337	Amended	Oct. 3031		V.6119	Amended	Nov. 3266
	LIV.339,341,343,345,347,349,351,365,367	Amended	Oct. 3031		VII.32903	Amended	Oct. 3028
	LIV.357,359,361,363,373,385	Adopted	Oct. 3031		IX.15113	Amended	Mar. 904
	LIV.369,371,375,377,381,383,387,389,391	Amended	Oct. 3031		XI.3501	Amended	June 1600
	LIV.392,393,395,396,397,399,501	Amended	Oct. 3031		XI.6901,6903	Amended	June 1599
	LV.1001,1003,1005	Amended	Aug. 2440		XI.7503	Amended	June 1572
	LV.1003,1005	Amended	Mar. 905		XI.10301,10303,10501,10503,10701	Amended	Sept. 2629
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	LX.2315	Adopted	Jan. 344		XIII.8501	Amended	July 2159
	LX.3303,3305,3309	Amended	June 1601		XV.335	Repealed	Nov. 3264
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	LXI.2905,2907,3105,3111,3113	Amended	Aug. 2411		XV.25701	Amended	Nov. 3265
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	LXVII.705,901,907,1501,1503,1505,1507	Amended	Oct. 2998		XXI.2103,2107,2301,2501,2503,2701,2901	Amended	Sept. 2624
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51	VII.105,107,111-121,301-363,503-559	Adopted	Sept.	2633	67	III.2527	Amended	Mar.	810	
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	XVII.103,105,107,109,111,301,303,305	Amended	July	2165		V.6529,6531,6533,6535,6537,6539,6541	Repealed	Mar.	816	
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						V.6557,6559,6561,6563,6565,6567,6569	Repealed	Mar.	816	
						V.7301,7303,7305,7307,7309,7311,7313	Adopted	Mar.	816	
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	I.2724,2725,2726,2742	Amended	May	1417		III.144,145,149	Amended	Mar.	916	
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	I.327,331,333,501,505,511,513,515,516	Amended	Mar.	905	VII.110,149		Amended	Aug.	2439	
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					XIX.115	Amended	Dec.	3541		
67	III.1975	Amended	Aug.	2368						

Potpourri

POTPOURRI

Department of Agriculture and Forestry Horticulture Commission

Landscape Architect Registration Exam

The next landscape architect registration examination will be given June 11-12, 2012, beginning at 7:45 a.m. at the Nelson Memorial Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending the application and fee is as follows.

New Candidates: February 24, 2012
Re-Take Candidates: March 23, 2012
Reciprocity Candidates: April 27, 2012

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, P.O. Box 3596, Baton Rouge, LA 70821-3596, phone (225) 952-8100.

Any individual requesting special accommodations due to a disability should notify the office prior to March 23, 2012. Questions may be directed to (225) 952-8100.

Mike Strain, DVM
Commissioner

1101#089

POTPOURRI

Department of Environmental Quality Office of the Secretary Legal Division

Stakeholder Meeting for Discharges of Produced Water to the Territorial Seas

Authorization to discharge produced water in the territorial seas will require participation in an evaluation of the effects of produced water discharges on the environment and human health.

The LDEQ will conduct a stakeholder meeting on February 23, 2012 at 1:30 p.m. at LDEQ headquarters, Galvez Building, Room 1051, 602 N. Fifth St. Baton Rouge, LA 70802 to accept input from all stakeholders regarding the protocols and requirements for an evaluation of the effects of produced water discharges on the environment and human health. The proposed permitting process and requirements may be found on the LDEQ's website at:

<http://www.deq.louisiana.gov/portal/DIVISIONS/WaterPermits.aspx>.

Questions may be directed to Melvin C. Mitchell at (225) 219-3197, Bruce Fielding at (225) 219-3231 or Jennifer Sheppard at (225) 219-3499

Herman Robinson, CPM
Executive Counsel

1201#017

POTPOURRI

Office of the Governor Division of Administration Office of Information Technology (OIT)

OIT Bulletin Published

Pursuant to LAC 4:XV.501, et seq., the Office of Information Technology (OIT) published the following Bulletin(s) in the period 12/01/2011 to 12/31/2011:

Bulletin Number	Topic	Date
	IT Standard 6-02 Personal Computing: Desktop Operating System, Revised	
ITB 11-02	IT Standard 6-03 Personal Computing: Desktop Office Suite, Revised	12/15/2011

This bulletin provides updated versions of these two standards. Updated versions are being published using a new numbering scheme.

OIT Bulletins, Standards, Guidelines and Policies are posted on the OIT web site at: <http://www.doa.louisiana.gov/oit/index.htm>

To receive e-mail notifications when an OIT Bulletin is published, register at: http://www.doa.louisiana.gov/oit/email_notifications.htm

Ed Driesse
Chief Information Officer

1201#012

POTPOURRI

Office of the Governor Office of Financial Institutions

Judicial Interest Rate Determination For 2012

R.S. 13:4202(B), as amended by Acts 2001, No. 841, requires the Louisiana Commissioner of Financial Institutions to determine the judicial interest rate for the calendar year following the calculation date. The commissioner has determined the judicial interest rate for the calendar year 2012 in accordance with La. R.S. 13:4202(B)(1).

The commissioner ascertained that on October 3, 2011, the first business day of the month of October, the approved discount rate of the Federal Reserve Board of Governors was three-quarters (.75%) percent.

R.S. 13:4202(B) (1) mandates that on and after January 1, 2002, the judicial interest rate shall be three and one-quarter percentage points above the Federal Reserve Board of Governors approved discount rate on October 3, 2011. Thus,

the effective judicial interest rate for the calendar year 2012 shall be Four (4.0%) percent per annum.

R.S. 13:4202(B)(2) provides that the publication of the Commissioner's determination in the Louisiana Register "shall not be considered rulemaking within the intendment of the Administrative Procedure Act, R.S. 49:950 et seq., and particularly R.S. 49:953." Therefore, (1) a fiscal impact statement, (2) a family impact statement, and (3) a notice of intent are not required to be filed with the Louisiana Register.

John P. Ducrest, C.P.A.
Commissioner

1201#092

POTPOURRI

**Department of Natural Resources
Office of the Secretary**

Loran Coordinates

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 5 claims in the amount of \$21,367.44 were received for payment during the period December 1, 2011 - December 31, 2011

There were 5 paid and 0 denied.

Latitude/Longitude Coordinates of reported underwater obstructions are:

2909.606	9025.016	Terrebonne
2910.095	9004.883	Jefferson
2917.948	8944.189	Plaquemines
2919.437	8931.092	Plaquemines
2956.353	8922.710	Saint Bernard

A list of claimants and amounts paid can be obtained from Gwendolyn Thomas, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225)342-9388.

Scott A. Angelle
Secretary

1201#013

POTPOURRI

**Department of Public Safety
Office of State Police
Towing and Recovery Section**

Public Hearing—Towing, Recovery
and Storage Rules (LAC 55:I.Chapter 19)

The Department of Public Safety and Corrections, Office of State Police hereby gives notice that it will hold a public hearing on January 24, 2012 beginning at 9:00 a.m. in Conference Room A on the first floor of the Louisiana State Police building located at 7919 Independence Blvd., Baton Rouge, LA 70806. The purpose of this public hearing will be for the Office of State Police, Towing and Recovery Section to receive comments from the public regarding proposed rules amending the above listed sections which were the subject of a Notice of Intent published in the *Louisiana Register* on December 20, 2011. The public is invited to attend and take part in this public hearing by providing comments, information or facts relative to the proposed rule changes by the Department of Public Safety, Office of State Police.

Jill Boudreaux
Undersecretary

1201#094

POTPOURRI

**Workforce Commission
Office of Workers' Compensation Administration**

Utilization Review Procedures Public Hearing
(LAC 40:I.Chapter 27)

The Office of Workers' Compensation published a Notice of Intent to amend its UR rules in the December 20, 2011 edition of the *Louisiana Register*. The notice solicited written comments and request for public hearing. As a result of its analysis of the written comments received, the OWCA announces, in accordance with R.S. 49:968(H)(2), that a public hearing will be held on January 30, 2012, at 9 a.m. at the Louisiana Workforce Commission Training Center, 2155 Fuqua St., Baton Rouge, LA 70802.

Curt Eysink
LWC Executive Director

1201#088

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